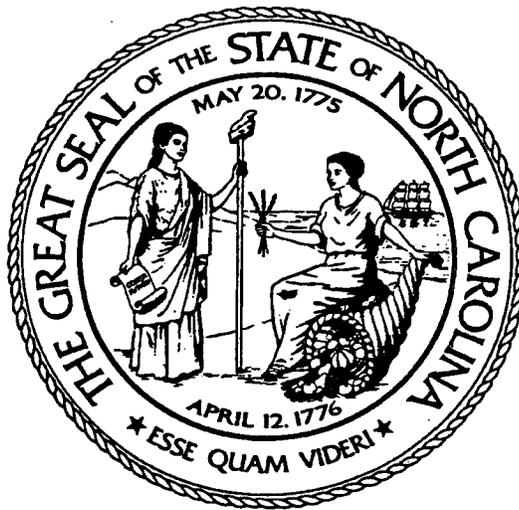


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1991  
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# LEGISLATIVE RESEARCH COMMISSION

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## CONSUMER PROTECTION



### REPORT TO THE 1991 GENERAL ASSEMBLY OF NORTH CAROLINA 1991 SESSION

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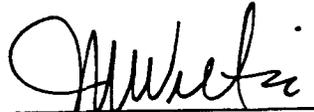


December 14, 1990

TO THE MEMBERS OF THE 1991 GENERAL ASSEMBLY:

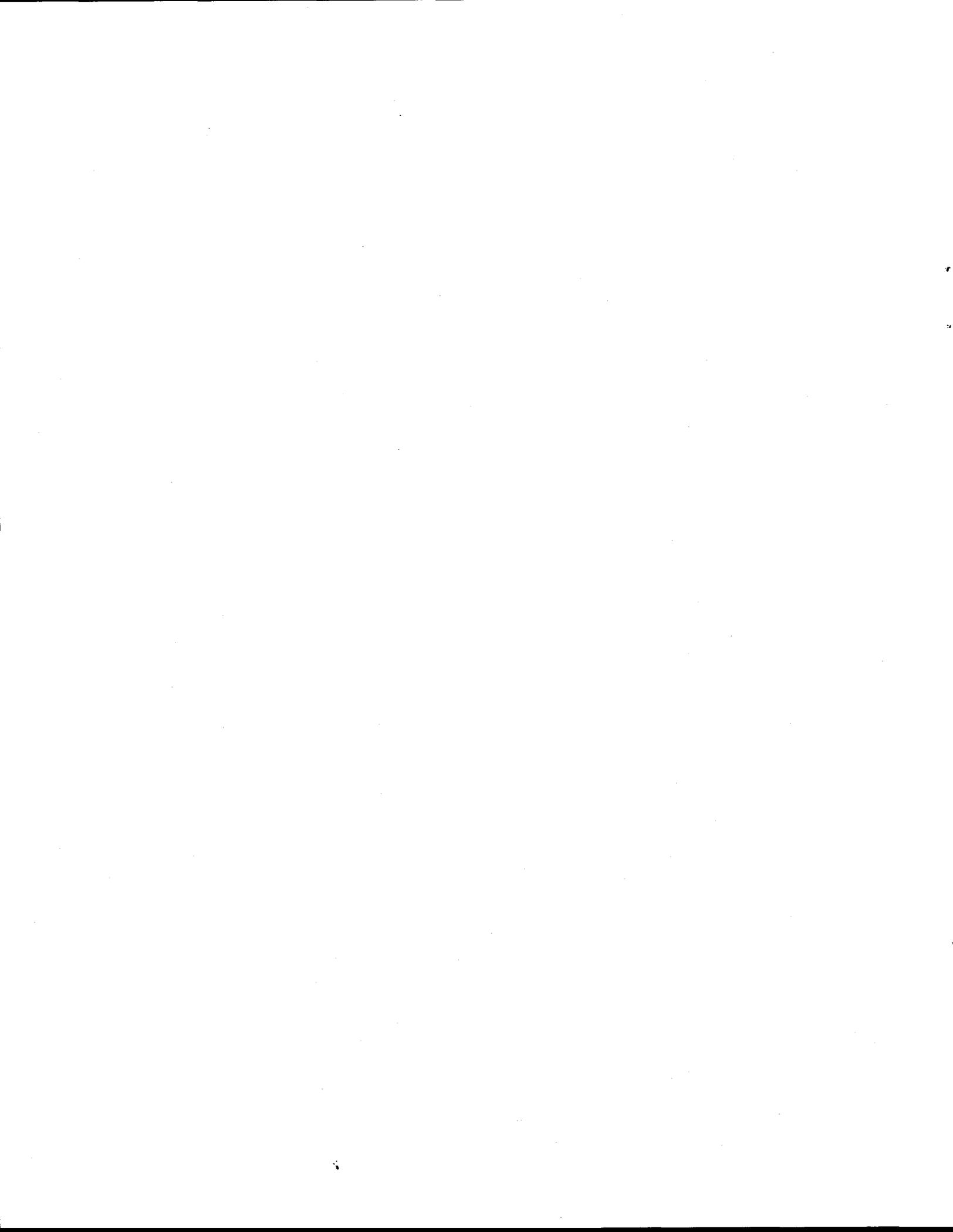
The Legislative Research Commission herewith submits to you for your consideration its final report on Consumer Protection. The report was prepared by the Legislative Research Commission's Committee on Consumer Protection pursuant to Section 2.1(9) of Chapter 802 of the 1989 Session Laws.

Respectfully submitted,

  
Josephus L. Mavretic  
Speaker

  
Henson P. Barnes  
President Pro Tempore

Cochairmen  
Legislative Research Commission



1989-1990

LEGISLATIVE RESEARCH COMMISSION

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## PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is a general purpose study group. The Commission is co-chaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

At the direction of the 1989 General Assembly, the Legislative Research Commission has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Co-chairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Co-chairs, one from each house of the General Assembly, were designated for each committee.

The study of consumer protection issues, including those related to the elderly was authorized by Section 2.1(9) of Chapter 802 of the 1989 Session Laws (1989 Session). The relevant portion of Chapter 802 is included in Appendix A. The Legislative Research Commission grouped this study in its Credit and Consumer Protection area under the direction of Representative Harold J. Brubaker. The Committee was chaired by Senator A. D. Guy and Representative John C. Hasty. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the Committee is filed in the Legislative Library.

## COMMITTEE PROCEEDINGS

The Legislative Research Commission's Consumer Protection Study Committee met six times during 1990. The Committee heard from speakers who addressed several different areas of consumer concerns, and devoted the majority of its attention to two of those areas: one area concerned the problems consumers face in the home construction industry; the other had to do with the regulation of reverse mortgages, a program related exclusively to elderly consumers.

At its first meeting in January the Committee heard a variety of consumer concerns. These concerns related to: price gouging in the fuel and heating oil industries, home improvement scams, problems with professional competence and enforcement standards in the home construction industry, and the reverse mortgage program which provides federally guaranteed home equity type loans to elderly consumers. At this meeting the Committee also heard from staff of the Consumer Protection Division of the Attorney General's office, the Department of Insurance, and the Agricultural Extension Service, regarding services they provide in the consumer protection/education area.

The second and third meetings of the Committee provided more detailed information on problems in the home construction industry and responses by industry representatives to concerns raised and solutions proposed. By the third meeting the Committee felt that the problems regarding professional incompetence and lack of attention to enforcement of professional standards in the home construction industry were serious and complex enough to warrant more in-depth and impartial study. As a result the Committee requested the State Auditor to conduct a performance audit of State established Boards and Commissions whose duties and powers relate to home construction. The Auditor's final report was presented to the Committee at its November 16 meeting and is attached as Appendix D-1 of this report.

At its fourth meeting in September, 1990, the Committee was asked to consider proposed legislation regulating reverse mortgages. Committee members were particularly interested in this proposal because of the General Assembly's specific charge that the Committee study consumer issues affecting the elderly. The Committee considered the reasons for such regulation and instructed staff to redraft the proposed legislation in final form for consideration at its November meeting. The Committee also heard proposals for other consumer related legislation, among which were: increasing penalties for unfair debt collection practices; regulation of business practices related to campground sales and to credit repair services; and changes in current law regarding the application of unearned finance charges when mobile home installment loans are paid off early by the debtor. The Committee discussed the need for such legislation and instructed staff to redraft the proposals for its review in November.

In anticipation of receiving the State Auditor's final report, the Committee devoted its October agenda exclusively to discussion of consumer problems in the home construction industry. Although staff in the Auditor's office had completed their investigation and findings pursuant to this audit before the Committee's October meeting, statutory requirements granting auditees 30 days to respond to the Auditor's findings prohibited the Auditor from publishing the report until early in November. Consequently, Committee members were not informed of the Auditor's findings until its November 16 meeting. At the October meeting the Committee heard responses to its home construction study from a county building inspection official and from a licensed general contractor. The Committee also heard proposals for legislation related to home construction from the staff in the Consumer Protection Division of the Attorney General's office. The Committee discussed the need for such legislation and instructed staff to redraft the proposals for consideration at its November meeting.

The Committee's sixth meeting was held on November 16, 1990. First on the agenda was presentation of the State Auditor's final report and recommendations regarding the home construction industry. The remainder of the meeting was a work session during which the Committee reviewed and considered draft legislation addressing consumer problems revealed over the course of its study. The Committee reviewed fifteen proposed bills during its work session. Eight of these proposals related to home construction. Two of the proposals specifically addressed concerns of elderly consumers. The Committee adopted thirteen of the fifteen legislative proposals, either as drafted or as amended, and made additional recommendations regarding some of those adopted proposals. Of the two proposals not adopted, one regarding the regulation of loan brokers was withdrawn from consideration, and the other proposing that violations of the general contractors licensing statute constitute an unfair trade practice was defeated. Recommendations and legislation adopted by the Committee during its work session are provided in this report under the "Findings and Recommendations" section, and in the appendices. The Committee scheduled its final meeting to review its final report to the Legislative Research Commission for December 3, 1990.

At its final meeting on December 3rd, the Committee reviewed and approved its final report to the Legislative Research Commission. After approving its final report the Committee voted to recommend to the General Assembly that it enact legislation to establish a permanent committee to study consumer protection issues and that such committee should hold meetings in areas across the State to enable more consumers to bring their concerns to the the committee's attention.

## FINDINGS AND RECOMMENDATIONS

The Consumer Protection Study Committee makes the following recommendations and legislative proposals to the 1991 General Assembly. The first six recommendations and proposals cover a broad range of consumer concerns studied by the Committee. The remaining seven relate to consumer problems in the home construction industry. Each recommendation is followed by a brief explanation of or rationale for the recommendation, and, where appropriate, refers to proposed legislation adopted by the Committee.

**RECOMMENDATION ONE:** The General Assembly should enact the bill found in Appendix C-1, which increases the penalties for violations of the unfair debt collection practices statutes. The bill amends current law to provide minimum and maximum penalties that are available for each violation of the statute.

Under current law, the maximum civil penalty for violations is \$1,000 plus actual damages sustained, and violations are an unfair trade practice under Chapter 75 of the General Statutes. However, attorneys fees and treble damages that are ordinarily available under Chapter 75 are not available for violations of the debt collection statutes. The Committee finds that the maximum penalties are rarely imposed, and actual monetary harm is often small. This makes bringing an action more expensive than the potential remedy, thereby undermining the intent of the statutes to prevent unfair debt collection practices.

**RECOMMENDATION TWO:** The General Assembly should enact the bill found in Appendix C-2, which abolishes application of the "Rule of 78s" in calculating the

amount due on an installment loan contract secured by a mobile home when the debtor seeks to pay the debt off early.

The purchase of a mobile home on the installment plan is governed by Chapter 25A of the General Statutes, Retail Installment Sales Act, whereas the purchase of a stick-built home through a mortgage instrument is subject to Chapter 24 of the General Statutes, Interest. Chapter 24 prohibits the assessment of prepayment penalties on mortgage loans under \$100,000. Under Chapter 25A, however, creditors are permitted to assess a prepayment penalty against a borrower who seeks to pay off the mobile home loan early. The method for determining the amount of that penalty is the Rule of 78s. The Committee finds that if a borrower wants to pay off the mobile home loan within the first few years of the installment contract, application of the Rule of 78s results in that borrower paying considerably more, perhaps thousands of dollars, than he or she borrowed in the first place, even after being credited with all monthly payments made to date. The Committee finds also that the Rule of 78s as a mathematical tool is no longer necessary now that calculators are readily available and more widely used for such calculations. Moreover, the Committee was informed by the North Carolina Manufactured Housing Institute that it has no objection to abolishing the Rule of 78s insofar as it applies to mobile home installment loans. Given the severe financial hardship that application of the Rule of 78s can impose on consumers of mobile homes, the Committee recommends that its use be abolished with respect to prepayment of installment loans secured by mobile homes.

**RECOMMENDATION THREE:** The General Assembly should enact the bill found in Appendix C-3, which regulates the issuance of reverse mortgages by qualified lenders. The bill establishes a new Article under Chapter 53 of the General Statutes, makes this the governing Chapter for reverse mortgage transactions, and

exempts such transactions from certain laws and regulations governing other mortgage transactions. Regulation of reverse mortgages will be administered by the Commissioner of Banks.

Reverse mortgages are loans, guaranteed by the U.S. Department of Housing and Urban Development, whereby lenders make periodic payments to qualified borrowers against the equity in their homes. Qualified borrowers must be 62 years of age or older. The Committee finds that reverse mortgage loans offer elderly homeowners an opportunity to use the equity that has accumulated in their homes to meet their financial needs. The Committee also finds that lenders may be more willing to make reverse mortgage loans available if they are able to negotiate contract terms with borrowers without some of the restrictions that apply to conventional mortgage loans. The Committee believes that regulations provided for in the proposed legislation avoid restrictions on authorized lenders that might discourage them from making reverse mortgage loans available, but also provide adequate protection for the elderly consumer.

**RECOMMENDATION FOUR:** The General Assembly should enact the bill found in Appendix C-4, which regulates the sale of campground memberships. The bill amends the Chapter of the General Statutes regulating prepaid entertainment contracts by: including campground memberships under the definition of a prepaid entertainment contract; requiring sellers of such contracts to obtain bonds or escrow accounts to secure services under the contract; and requiring sellers to keep accurate records of bonds and escrow accounts which records are subject to review by the Attorney General.

The Committee finds that the more than 500 complaints received by the Attorney General's office concerning campground membership contracts warrants legislative

action by the General Assembly to protect the interests of consumers who purchase campground facilities and services. The Committee also finds that such regulation would particularly benefit retired citizens who comprise a significant portion of consumers who purchase campground memberships and sites for their recreational use. The Committee recognizes that bond requirements may be a hardship for small business operators; however, the Committee feels that exemption from the bonding requirement in the proposed legislation would mitigate difficulties that may be caused by such requirements, while offering some protection for consumers from loss of advance fees paid if the campground operator goes out of business or is otherwise unable to deliver services.

**RECOMMENDATION FIVE:** The General Assembly should enact the bill found in Appendix C-5, which makes uniform the damage disclosure requirement pertaining to the sale of new cars.

Current law requires that automobile manufacturers who repair damage to new cars before delivery to the auto dealer must disclose that damage to the dealer if the damage exceeds 3% of the manufacturer's suggested retail price. Current law also requires automobile dealers who repair damage to new cars before sale to a consumer must disclose that damage if the damage exceeds 5% of the manufacturer's suggested retail price. The Committee finds that although new cars repaired prior to sale may be covered under the manufacturer's warranty, the warranty may not extend to damage that occurred in transit or on the dealer's lot. The Committee also finds that the 2% difference in disclosable damage amounts applicable to the manufacturer and the dealer may constitute significant damage that ought to be disclosed to the consumer before he or she decides to purchase the car.

**RECOMMENDATION SIX:** The General Assembly should enact the bill found in Appendix C-6, which provides for the regulation of businesses that offer credit repair services.

The Committee finds that consumers who have blemishes or inaccuracies on their credit histories often have difficulty in securing further credit until such information is corrected or becomes obsolete. The federal Fair Credit Reporting Act was enacted to ensure that consumers have access to credit information that is used by businesses to deny credit to the consumer, and to assist consumers in having inaccurate or obsolete information removed from their credit reports. The Committee recognizes, however, that many consumers are unaware of their rights under federal law, as well as the limited circumstances under which information in credit reports may be changed or deleted. The Committee is also aware that there are some businesses who advertise as being able to "repair" bad credit ratings, when in fact, such repair is not possible. The Committee believes that regulation of such business practices is necessary to ensure that consumers who are seeking to improve their credit ratings are fully informed of the extent to which such improvement is permissible under law, and that such consumers are not charged for services that are not delivered or that are ordinarily available to the general public free of charge.

**RECOMMENDATION 6(a):** The General Assembly should consider whether the proposed legislation found in Appendix C-6 should be amended as follows:

- (a) Include a bond requirement of at least \$10,000 for businesses that provide credit repair services;
- (b) Instead of or in addition to the violation of the credit repair act being an unfair trade practice, such violation should be a Class J felony; and

- (c) **Prohibit credit repair businesses from representing that derogatory credit information can be removed or that the credit report or credit standing of the consumer can in any way be improved, regardless of whether the credit repair business is aware that the information in the consumer's credit report is inaccurate or disputed.**

**RECOMMENDATION SEVEN:** The General Assembly should enact the bill found in Appendix C-7, which expands the duty of local building inspectors who discover defects in buildings to notify not only the owner and occupant of the building, but the builder when the defect is the result of a building code violation. The bill also makes it the primary responsibility of such builder to correct the defect immediately.

The Committee finds that when general contractors construct buildings that contain building code violations, and local building inspectors do not catch the violation before the certificate of occupancy is issued, current law puts the burden of correcting the violation on the owner or occupant of the building, even though the builder and the local official each had a duty to ensure that the violation was corrected before a certificate of occupancy was issued. The Committee also finds that it is unfair that homeowners must bear the sole financial burden of correcting defects in their homes that result from building code violations when the law that requires that such defects be cured was enacted to protect the homeowner in the first place.

**RECOMMENDATION 7(a):** The General Assembly should consider amending the proposed legislation found in Appendix C-7 to provide for a statute of limitations and a statute of repose with respect to the builder's duty to correct defects that are a result of building code violations. The Committee suggests that the General Assembly consider a three year statute of limitations that would be

triggered upon discovery of the defect, and a ten year statute of repose that would bar any action against the contractor more than 10 years from the date of the issuance of the certificate of occupancy.

**RECOMMENDATION EIGHT:** The General Assembly should enact the bill found in Appendix C-8, which provides that in civil actions brought by homeowners or homeowners' associations against general contractors, reasonable attorneys fees shall be awarded to the plaintiff if the plaintiff substantially prevails in the action.

The Committee finds that many consumers who purchase newly constructed homes discover serious defects in the construction that are the result of incompetence or negligence by the builder, and that were also building code violations that should have been caught by the local inspector. The Committee also finds that such defects are often very costly to repair and the cost to the homeowner to sue the contractor to recover such repair costs is prohibitive. Consequently, many homeowners are without adequate legal remedies to recover the substantial costs they must bear to correct problems that should have been corrected before the contractor was paid or before the certificate of occupancy to the home was issued. The Committee finds that making reasonable attorney's fees available to homeowner's who substantially prevail in civil suits against general contractors will provide the consumer with the ability to pursue legal remedies when laws designed to prevent the necessity for such remedies are not adequately enforced.

**RECOMMENDATION NINE:** The General Assembly should enact the bill found in Appendix C-9, which requires the General Contractors Licensing Board and the Code Officials Qualification Board to implement recommendations made by the

**State Auditor and to report to the Joint Legislative Commission on Governmental Operations in October, 1991 on the status of implementation.**

The Committee finds that the State building code and the requirements for licensure of general contractors and certification of building inspectors were enacted to ensure the public safety in the construction of buildings, and to protect the consuming public from incompetence and negligence in skilled and professional practices. Such laws also provide a forum for consumers to bring incompetent professional practices to the attention of appropriate officials to ensure that such practices are stopped. The Committee also finds, as a result of investigation by the State Auditor, that improvements need to be made in the way the General Contractors Licensing Board and the Code Officials Qualification Board carry out their statutory duties and authority. The Committee believes that when the General Assembly is made aware of improvements that need to be made to ensure that the intent of its laws is being followed, it should require that the recommendations for improvement be implemented and should keep track of the implementation through periodic reporting by the implementing agency.

**RECOMMENDATION TEN: The General Assembly should enact the bill found in Appendix C-10, which reduces the project cost amount that triggers the requirement that a general contractor be licensed under Chapter 87 of the General Statutes. The bill also clarifies certain of the requirements for exemption from licensure.**

The Committee finds that the purpose of the General Contractors Licensing statute is to protect the general public from incompetent builders, and to deter unlicensed persons from engaging in the construction business. The Committee also finds that allowing unlicensed persons to build structures the cost of which is \$45,000 or less permits a significant number of builders to avoid the licensure requirements of Chapter

87 and increases the likelihood that such structures will be built by persons who are not competent to do the work. In the Committee's view, reducing the project cost requirement for licensure from \$45,000 to \$25,000 will provide greater safeguards against incompetence in the building industry. The Committee recognizes that persons who own land may wish to build on that land, or may wish to add to the size of their home, and that such persons ought to be able to do so without having to obtain a general contractors license. The Committee believes that an exemption for such landowners is important to preserve, but feels that such exemption should be narrowly devised to meet this need without undermining the purpose of the licensing statute. The Committee recommends, therefore, that the General Assembly enact the bill found in Appendix C-10, which amends the ownership exemption language, and creates a specific exemption for farmers who construct buildings on land for their use in the farming business.

The Committee was made aware that reducing the project cost limit in the licensing statute may have an adverse impact on nonprofit corporations that are attempting to construct affordable housing using mostly volunteer labor and donated materials. The Committee did not have sufficient time, however, to carefully study whether such corporations should be exempt from the licensing statute.

**RECOMMENDATION 10(a):** The General Assembly should consider the following amendment to Section 1 of the proposed legislation found in Appendix C-10: "This section shall not apply to any nonprofit organization incorporated under Chapter 55A of the General Statutes and exempt from corporate income tax under G.S. 105-130.11 and under Section 501(c) of the Internal Revenue Code, that is organized for the purpose of providing affordable housing to low income persons, and that undertakes to construct or alter single-family residential

dwelling for occupancy by low income persons, provided that the cost of the undertaking is less than forty-five thousand dollars (\$45,000)."

**RECOMMENDATION ELEVEN:** The General Assembly should enact the bill found in Appendix C-11, which authorizes the General Contractors Licensing Board to take additional disciplinary action against a licensee, and to provide that a person who prefers charges against a licensee is an aggrieved person for purposes of the Administrative Procedures Act.

The Committee finds that G.S. 87-11 should expressly authorize the General Contractors Licensing Board to suspend a license or to invoke other appropriate disciplinary measures, and to clarify that criminal prosecution is not required in order for the Board to impose such measures. The Committee also finds that the Board should have the express authority to suspend the imposition of its disciplinary measures, especially when such suspension will provide a remedy for the complaining homeowner, that remedy being correction of the problem that lead to the complaint against the licensee.

The Committee recognizes that consumers who believe that the licensing Board has made a decision that is beyond their authority or contrary to the evidence presented should have an avenue for appealing that decision to superior court. Providing this avenue of appeal for consumers is consistent with the intent of Chapter 87 to protect the public by preventing incompetence in the building profession.

**RECOMMENDATION TWELVE:** The General Assembly should enact the bill found in Appendix C-12, which establishes the Homeowners Recovery Fund. The Fund is administered by the General Contractors Licensing Board. Persons who exhaust their civil remedies against contractors and who prevail in the action but

cannot collect on the judgment, may apply to the Board for compensation from the Fund.

The Committee finds that homeowners who sue general contractors for defects in the construction of their home often find themselves with a judgment against the contractor that they cannot collect because the contractor is insolvent. The Committee also finds that the establishment of a recovery fund, similar to other recovery funds established under State law, would provide those homeowners who have proven that the substantial damages they have suffered is the fault of the general contractor, with some compensation for their losses. The Committee believes that establishment of a homeowners recovery fund is consistent with the intent behind other similar funds to compensate consumers for financial losses suffered due to the acts of licensees.

**RECOMMENDATION THIRTEEN:** The General Assembly should enact the bill found in Appendix C-13, which establishes the North Carolina Residential Contractors Review Committee within the General Contractors Licensing Board.

The Committee finds that an effective mechanism needs to be established within the General Contractors Licensing Board that ensures that complaints pertaining to residential construction that are properly filed with the Board, or that are referred to the Board from other State agencies, are carefully reviewed and, where necessary, investigated, and responded to in a timely fashion. The Committee also finds that the review and investigation of these complaints should be conducted by persons who are qualified in the field of residential construction, and that such review should include input from at least one member of the general public who has no ties to the construction industry.



APPENDIX A



GENERAL ASSEMBLY OF NORTH CAROLINA  
1989 SESSION  
RATIFIED BILL

CHAPTER 802  
SENATE BILL 231

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, TO MAKE APPROPRIATIONS THEREFOR, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I. TITLE

Section 1. This act shall be known as "The Studies Act of 1989."

\*\*\*\*\*

An outline of the provisions of the act follows this section. The outline shows the heading "-----CONTENTS/INDEX-----" and lists by general category the descriptive captions for the various sections and groups of sections that compile the act.

-----CONTENTS/INDEX-----

This outline is designed for reference only, and the outline and the corresponding entries throughout the act in no way limit, define, or prescribe the scope or application of the text of the act. The listing of the original bill or resolution in the outline of this act is for reference purposes only and shall not be deemed to have incorporated by reference any of the provisions contained in the original bill or resolution.

PART II.-----LEGISLATIVE RESEARCH COMMISSION

- Sec. 2.1
- Sec. 2.2
- Sec. 2.3
- Sec. 2.4
- Sec. 2.5
- Sec. 2.6
- Sec. 2.7

PART III.-----STATE PARKS STUDY COMMISSION

(S.B. 231 - Sherron, H.B. 436 - Crawford, N.J.).

- Sec. 3.1
- Sec. 3.2
- Sec. 3.3
- Sec. 3.4
- Sec. 3.5
- Sec. 3.6

PART IV.-----PUBLIC HEALTH STUDY COMMISSION

PART XXI.-----PERSONNEL SYSTEM

(S.B. 59 - Hunt of Moore, H.B. 140 - Stamey).

- Sec. 21.1
- Sec. 21.2
- Sec. 21.3
- Sec. 21.4
- Sec. 21.5
- Sec. 21.6

PART XXII.-----JUVENILE JURISDICTIONAL AGE, STATUTORY RAPE, AND VIOLENT VIDEOS

(H.B. 429 - Easterling, H.B. 1169 - Hurley, S.B. 906 - Chalk).

- Sec. 22.1

PART XXIII.-----LICENSING FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS STUDY

(H.J.R. 1322 - Mills).

- Sec. 23.1

PART XXIV.-----STATE MARINE PATROL STUDY

(S.B. 1267 - Barker).

- Sec. 24.1

PART XXV.-----EFFECTIVE DATE

- Sec. 25.1

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1989 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope and aspects of the study. The topics are:

- (1) State Ports--study continued (S.J.R. 96 - Barker, H.B. 133 - Hall), Lease and Renegotiation of Contracts of the North Carolina Railroad Company and the Atlantic and North Carolina Railroad Company,
- (2) Development of a State Strategy for the Management of Solid Waste (S.J.R. 112 - Speed, S.B. 1214 - Basnight) and Infectious Wastes (H.B. 1045 - Diggs),
- (3) Worker Training Trust Fund (S.B. 271 - Parnell),
- (4) Tourism's Growth and Effect--study continued (S.B. 297 - Block, H.B. 379 - Warren) and Travel/Tourism Reorganization (H.B. 1132 - Perdue),
- (5) Deregulation of Revolving Credit and Authorization of Credit Card Banks (S.B. 377 - Staton) and Linked Deposits (H.B. 1910 - Locks),
- (6) Administrative Procedure Act's Rule-Making Process (S.B. 535 - Johnson) and Office of Administrative Hearings and the Administrative Rules Review Commission (S.J.R. 1003 -Martin of Guilford, H.B. 1459 - Michaux),
- (7) "Willie M." Programs (S.J.R. 887 - Block),
- (8) State Procurement Contracts to Minority Business Enterprises (S.B. 927 - Hunt of Durham) and Small Business Technical Assistance Programs (H.J.R. 1514 - Colton),

- (9) Consumer Protection Issues, including those relating to the Elderly (S.B. 1261 - Barker),
- (10) State Marine Patrol (S.B. 1267 - Barker),
- (11) Sports Fishing Licenses (S.B. 1284 - Barker),
- (12) Revenue Laws--study continued, including the impact of 1989 tax law changes (H.J.R. 3 - Lilley) and Local Revenue Sources Options (S.B. 1298 - Odom),
- (13) Care Provided by Rest Homes, Intermediate Care Facilities, and Skilled Nursing Homes--study continued (H.J.R. 173 - Easterling), Necessity for Certificates of Need, and Continuing Care Issues,
- (14) Health Care/Insurance Costs Issues, including but not limited to, Availability, Benefits, Costs, Portability, Long-Term Care Insurance (H.B. 202 - Wiser), Health Insurance Costs (H.B. 961 - Perdue, S.B. 1068 - Johnson, Joe), Health Insurance (H.J.R. 1159 - Duncan), Infertility Treatment Coverage (H.B. 1187 - Payne), Mammogram/Pap Smear Coverage (H.B. 1014 - Barnes), and Health Care Insurance Coverage (H.B. 1242 - Mills),
- (15) Development of a State Strategy for the Protection of All Groundwater Resources (H.J.R. 554 - DeVane, S.J.R. 367 - Winner),
- (16) Surface Water Quality and Resources Issues. Including Interbasin Transfer, Albemarle-Pamlico Estuarine (H.J.R. 33 - Ethridge, B.), Coastal Water Quality -- study continued (H.J.R. 37 - Ethridge, B.), Haw in Scenic River System (H.B. 1224 - Hackney), Pesticides (H.J.R. 1399 - Holt), Water Resources Planning (H.B. 1945 - Payne), Toxaway River (H.B. 1955 - Colton), and Yadkin River Use and Protection (S.B. 1182 - Kaplan),
- (17) Insanity Verdict (H.B. 1364 - Rhodes), and Guilty but Insane Verdict (H.B. 1372 - Sizemore),
- (18) Agriculture Study (H.B. 1362 - Brown), Agribusiness Plant Variances (H.B. 1304 - Bowman), Fallow Deer (H.J.R. 1924 - James),
- (19) Homeless Persons (H.B. 2018 - Greenwood, S.B. 1290 - Martin of Guilford),
- (20) State Information Processing Needs and Cost -- study continued (S.B. 47 - Royall),
- (21) Sports Fishing Licenses (S.B. 1284 - Barker),
- (22) Proprietary Schools (S.B. 854 - Martin, W.),
- (23) Public Employees' Day Care and Medical and Dental Benefits.

Sec. 2.2. Legislative Activity Between Legislative Sessions and Procedures to Shorten the Legislative Session. The Legislative Research Commission may study the procedures of this State's, other states' and other legislative bodies' practices and procedures regulating legislative and study activity and may make recommendations as to changes in law, procedures and rules that will lead to greater efficiency in the legislative process while safeguarding the rights of all members of the General Assembly and of the citizens in this State's legislative process.

Sec. 2.3. State Capital Assets and Improvements (S.B. 1240 - Sherron). The Legislative Research Commission may study the:

- (1) Inventory of State capital assets and the use of those assets,
- (2) Issue of preventive maintenance for State buildings, and
- (3) Need and feasibility of:
  - a. Establishing in the State budget a reserve for repairs and renovations and the administration of such a reserve, and



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 1261

Short Title: Consumer Protection/Elderly/Study.

(Public)

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Sponsors: Senators Barker; Allran, Ballance, Basnight, Block, Carpenter, Chalk, Cochrane, Conder, Daniel, Daughtry, Ezzell, Hardin, Harris, Hunt of Durham, Hunt of Moore, Johnson of Cabarrus, Kaplan, Martin of Pitt, Martin of Guilford, Marvin, Murphy, Parnell, Plyler, Rauch, Raynor, Richardson, Sands, Sherron, Simpson, Soles, Speed, Swain, Tally, Walker, and Ward.

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Referred to: Rules and Operation of the Senate.

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May 10, 1989

A BILL TO BE ENTITLED

1  
2 AN ACT TO APPROPRIATE FUNDS FOR THE LEGISLATIVE STUDY  
3 COMMISSION ON CONSUMER PROTECTION ISSUES AND THE ELDERLY.

4 The General Assembly of North Carolina enacts:

5 Section 1. The Legislative Study Commission on Consumer Protection  
6 Issues and the Elderly is created. The Commission shall consist of 12 members: six  
7 Senators appointed by the President Pro Tempore of the Senate, and six  
8 Representatives appointed by the Speaker of the House of Representatives.

9 Sec. 2. The President Pro Tempore of the Senate shall designate one  
10 Senator as cochairman and the Speaker of the House of Representatives shall  
11 designate one Representative as cochairman.

12 Sec. 3. The Commission shall study:

- 13 (1) The consumer protection laws and how they affect the elderly;  
14 (2) Special problems the elderly face as consumers; and  
15 (3) Whether additional legal protection ought to be afforded the  
16 elderly as consumers.

1           Sec. 4. The Commission shall submit a final report of its findings and  
2 recommendations to the General Assembly on or before April 1, 1990, by filing the  
3 report with the President Pro Tempore of the Senate and the Speaker of the House  
4 of Representatives. Upon filing its final report, the Commission shall terminate.

5           Sec. 5. The Commission, while in the discharge of official duties, may  
6 exercise all the powers provided for under the provisions of G.S. 120-19. and G.S.  
7 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the  
8 joint call of the cochairmen. The Commission may meet in the Legislative Building  
9 or the Legislative Office Building.

10          Sec. 6. Members of the Commission shall receive subsistence and travel  
11 expenses at the rates set forth in G.S. 120-3.1.

12          Sec. 7. The Commission may contract for professional, clerical, or  
13 consultant services as provided by G.S. 120-32.02. The Legislative Services  
14 Commission, through the Legislative Administrative Officer, shall assign professional  
15 staff to assist in the work of the Commission. The House of Representatives' and the  
16 Senate's Supervisors of Clerks shall assign clerical staff to the Commission or  
17 committee, upon the direction of the Legislative Services Commission. The expenses  
18 relating to clerical employees shall be borne by the Commission.

19          Sec. 8. When a vacancy occurs in the membership of the Commission the  
20 vacancy shall be filled by the same appointing officer who made the initial  
21 appointment.

22          Sec. 9. All State departments and agencies and local governments and  
23 their subdivisions shall furnish the Commission with any information in their  
24 possession or available to them.

25          Sec. 10. There is appropriated from the General Fund to the General  
26 Assembly \$15,000 for the 1989-90 fiscal year for the The Legislative Study  
27 Commission on Consumer Protection Issues and the Elderly.

28          Sec. 11. This act shall become effective July 1, 1989.

APPENDIX B



LRC CONSUMER PROTECTION  
MEMBERS

LRC Member in Charge:  
Rep. Harold J. Brubaker  
138 Scarboro Street  
Asheboro, N. C. 27203

President Pro Tempore  
Appointments

Sen. A. D. Guy  
Co-Chairman  
P.O. Box 340  
Jacksonville, N.C. 28541

Sen. Wanda H. Hunt  
P.O. Box 1335  
Pinehurst, N. C. 28374

Mr. Bentley Leonard  
274 Merrimon Avenue  
Asheville, N. C. 28801

Sen. T. LaFontine Odom  
1100 S. Tryon Street  
Charlotte, N. C. 28203

Mr. Jim Parker  
4137 Brewster Drive  
Raleigh, N. C. 27606

Sen. Robert G. Shaw  
P.O. Box 8101  
Greensboro, N. C. 27419

Sen. James D. Speed  
Route 6, Box 542  
Louisburg, N. C. 27549

Staff:  
Gann Watson  
Bill Drafting Division  
(919) 733-6660

Speaker of the House  
Appointments

Rep. John C. Hasty  
Co-Chairman  
P.O. Box 945  
Maxton, N. C. 28364

Rep. Ruth M. Easterling  
811 Bromley Road, Apt. #1  
Charlotte, N.C.28207

Rep. Bradford W. Ligon  
Route 12, Box 460  
Salisbury, N. C. 28144

Rep. Albert S. Lineberry, Sr.  
P.O. Box 630  
Greensboro, N. C. 27402

Rep. Coy C. Privette  
306 Cottage Drive  
Kannapolis, N. C. 28081

Mr. Frank Richardson  
Anson Senior High School  
P.O. Box 513  
Wadesboro, N. C. 28170

Rep. Barney Paul Woodard  
Box 5  
Princeton, N. C. 27569

Clerk:  
Lillie Pearce  
Legislative Building, Rm. 1220  
(919) 733-5746



APPENDIX C



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991  
DRAFT PROPOSED COMMITTEE BILL

H

D

91-LN-001

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Debt Collection Penalty Up.

(Public)

Sponsors: Representative Hasty.

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO INCREASE THE PENALTIES FOR VIOLATIONS OF THE DEBT  
3 COLLECTION PRACTICES ACTS.  
4 The General Assembly of North Carolina enacts:  
5           Section 1. G.S. 75-56 reads as rewritten:  
6 "§ 75-56. Application.  
7 The specific and general provisions of this Article shall  
8 exclusively constitute the unfair or deceptive acts or practices  
9 proscribed by G.S. 75-1.1 in the area of commerce regulated by  
10 this Article. Notwithstanding the provisions of G.S. 75-15.2 and  
11 75-16, in private actions or actions instituted by the Attorney  
12 General, civil penalties imposed shall not be less than one  
13 hundred dollars (\$100.00) for each violation nor more than one  
14 thousand dollars (\$1,000) for each violation, in excess of one  
15 ~~thousand dollars (\$1,000) shall not be imposed, nor shall damages~~  
16 be trebled for any violation under this Article."

## GENERAL ASSEMBLY OF NORTH CAROLINA

1           Sec. 2. G.S. 58-70-130 reads as rewritten:

2 "§ 58-70-130. Civil liability.

3     (a) Any collection agency which violates Part 3 of this Article  
4 with respect to any debtor shall be liable to that debtor in an  
5 amount equal to the sum of any actual damages sustained by the  
6 debtor as a result of the violation.

7     (b) Any collection agency which violates Part 3 of this Article  
8 with respect to any debtor shall, in addition to actual damages  
9 sustained by the debtor as a result of the violation, also be  
10 liable to the debtor only in an individual action, and its  
11 additional liability therein to that debtor shall be for a  
12 penalty in such amount as the court may allow, which shall not be  
13 less than one hundred dollars (\$100.00) for each violation nor  
14 greater than one thousand dollars ~~(\$1,000)~~ (\$1,000) for each  
15 violation.

16     (c) The specific and general provisions of Part 3 shall  
17 constitute unfair or deceptive acts or practices proscribed  
18 herein or by G.S. 75-1.1 in the area of commerce regulated  
19 thereby. Notwithstanding the provisions of G.S. 75-15.2 and  
20 75-16, civil penalties in excess of one thousand dollars (\$1,000)  
21 for each violation shall not be imposed, nor shall damages be  
22 trebled for any violation under Part 3.

23     (d) The remedies provided by this section shall be cumulative,  
24 and in addition to remedies otherwise available. Provided, that  
25 any punitive damages assessed against a collection agency shall  
26 be reduced by the amount of the civil penalty assessed against  
27 such agency pursuant to subsection (b)."

28           Sec. 3. This act is effective upon ratification and  
29 applies to actions brought on or after that date.

EXPLANATION: 91-LN-001 - INCREASE PENALTIES FOR UNFAIR DEBT  
COLLECTION PRACTICES

The purpose of this bill is to further the intent of the Unfair Debt Collection Practices Act by increasing the penalties for violations of the act. Under current law, violations of the act constitute an unfair/deceptive trade practice under Chapter 75; however, the ordinary penalties of attorneys fees and treble damages available under Chapter 75 are not available for violations of the debt collections act; moreover, the maximum civil penalty for violations is now \$1,000, in addition to actual damages sustained by the debtor. Apparently, the maximum penalty is rarely imposed and actual monetary harm is often small and difficult to prove. This makes bringing an action under the act more expensive than the potential remedy, thereby undermining the intent of the act.

page 1, line 13

This amends the debt collection practices section of Chapter 75 to impose a minimum penalty of \$100.00 for each violation and to make the maximum penalty of \$1,000 available for each violation of the act. Since the typical cause of action cites several violations of the act, the increased penalty is more likely to be effective as a deterrent and to reduce the expense of bringing the action. This section of Chapter 75 applies to persons who collect their own debts.

page 2, lines 9-11,  
17

This amends the Unfair Debt Collection Practices section of Chapter 58. It makes the minimum and maximum penalties for violations available for each violation. This section of Chapter 58 applies to debt collection agencies who collect the debts of others.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

91-LN-002A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Rule of 78s/Mobile Homes.

(Public)

Sponsors: Senator Speed.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ABOLISH THE USE OF THE RULE OF 78s AS IT PERTAINS TO  
3 INSTALLMENT LOANS SECURED BY MOBILE HOMES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 25A of the General Statutes is  
6 amended by adding the following new section to read:  
7 "§ 25A-32.1. Unearned finance charge credits on prepayment of  
8 mobile home loans.  
9 Notwithstanding any provision to the contrary in G.S. 25A-32 or  
10 in a consumer credit installment sale contract secured by a  
11 residential manufactured home as defined in G.S. 143-145(7), any  
12 buyer may satisfy the debt in full at any time before maturity,  
13 and in so satisfying such debt, shall be credited with all  
14 unearned finance charges.  
15 If the prepayment is made otherwise than on the due date of an  
16 installment, it shall be deemed to have been made on the  
17 installment due date nearest in time to the actual date of  
18 payment.  
19 If a seller obtains a judgment on a debt arising out of a  
20 consumer credit installment sale secured by a residential  
21 manufactured home as defined in G.S. 143-145(7), or if the seller  
22 repossesses the collateral securing the debt, the seller shall  
23 credit the buyer with all unearned finance charges as if the  
24 payment in full had been made on the date the judgment was

1 obtained or 15 days after the repossession occurred. If the  
2 seller obtains a judgment and repossesses the collateral, the  
3 seller shall credit the buyer with all unearned finance charges  
4 as if payment in full had been made on the date of the judgment  
5 or 15 days after the repossession, whichever occurs earlier."

6           Sec. 2. This act is effective upon ratification.

EXPLANATION: 91-LN-002A

ABOLISH RULE OF 78s.

The purpose of this bill is to abolish use of the Rule of 78s in calculating the amount due to the retailer when the consumer pays the debt off early on an installment contract secured by a mobile home.

Section 1

This amends Chapter 25A which governs retail installment sales. The amendment adds a new section to Chapter 25A which abolishes application of the Rule of 78s to prepayment of mobile home loans.

page 1, lines 10-14

In an installment sale contract secured by a mobile home, the buyer may pay the debt off early and when doing so, shall be credited with all unearned finance charges.

page 1, lines 16-19

If the prepayment is made other than on the due date of an installment, then it will be deemed paid on the installment due date nearest in time to the actual date of payment.

page 1, lines 19-24  
thru page 2, lines 1-5

If a seller obtains a judgment on the mobile home loan debt, and/or if the seller repossesses the home that secures the debt, then the seller must credit the buyer with all unearned finance charges as if the payment in full had been made on the date judgment was obtained or 15 days after repossession occurs.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

DRAFT PROPOSED COMMITTEE BILL

H

D

91-LNX-003A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Regulate Reverse Mortgages.

(Public)

Sponsors: Representative Brubaker.

Referred to:

1 A BILL TO BE ENTITLED  
 2 AN ACT TO REGULATE REVERSE MORTGAGES.  
 3 The General Assembly of North Carolina enacts:  
 4 Section 1. Chapter 53 of the General Statutes is  
 5 amended by adding a new Article to read:  
 6 "Article 21  
 7 Reverse Mortgage Act.  
 8 "§ 53-256. Title.  
 9 This Article shall be known and may be cited as the Reverse  
 10 Mortgage Act.  
 11 "§ 53-257. Purpose.  
 12 It is the intent of the General Assembly that reverse mortgage  
 13 loans be available so that elderly homeowners may use the equity  
 14 in their homes to meet their financial needs. The General  
 15 Assembly recognizes that there may be restrictions and  
 16 requirements that govern traditional mortgage transactions which  
 17 should not be applicable to reverse mortgages. The purpose of  
 18 this act is to authorize reverse mortgage transactions and to  
 19 clarify other provisions of North Carolina law which might  
 20 otherwise be applicable to reverse mortgage loans.

1 "§ 53-258. Definitions.

2 For purposes of this Article, unless the context clearly  
3 requires otherwise:

- 4       (1) 'Authorized lender', or 'lender', means any lender  
5       authorized to engage in business as a bank, savings  
6       institution, or credit union, under the laws of  
7       this State or of the United States, or any other  
8       person, firm, or corporation authorized to make  
9       reverse mortgage loans by the Commissioner of  
10       Banks.
- 11       (2) 'Borrower' means a natural person sixty-two years  
12       of age or older, who occupies and owns, in fee  
13       simple individually, or with another borrower as  
14       tenants by the entireties or as joint tenants with  
15       right of survivorship, an interest in residential  
16       real property securing a reverse mortgage loan, and  
17       who borrows money under a reverse mortgage loan.
- 18       (3) 'Commissioner' means the Commissioner of Banks of  
19       this State.
- 20       (4) 'Counselor' means an individual who has completed a  
21       training course on reverse mortgage counseling  
22       provided or approved by the Division of Aging of  
23       the Department of Human Resources, and whose name  
24       is maintained on the Commissioner's list of  
25       approved reverse mortgage counselors.
- 26       (5) 'Outstanding balance' means the current net amount  
27       of money owed by the borrower to the lender,  
28       calculated in accordance with G.S. 53-263(b),  
29       whether or not the sum is suspended pursuant to the  
30       terms of the reverse mortgage loan agreement or is  
31       immediately due and payable.
- 32       (6) 'Reverse Mortgage loan', or 'loan', means a loan  
33       for a definite or indefinite term (i) secured by a  
34       first mortgage or first deed of trust on the  
35       principal residence of the mortgagor, (ii) the  
36       proceeds of which are disbursed to the mortgagor in  
37       one or more lump sums, or in equal or unequal  
38       installments, either directly by the lender or the  
39       lender's agent, and (iii) which requires no  
40       repayment until a future time, upon the earliest  
41       occurrence of one or more events specified in the  
42       reverse mortgage loan contract.
- 43       (7) 'Shared Appreciation Mortgage' means a reverse  
44       mortgage loan pursuant to which the lender and the

1 borrower agree that, in addition to any interest  
2 accruing on the outstanding balance, the lender may  
3 collect an additional amount of interest equal to a  
4 percentage of any net appreciated value of the  
5 property during the term of the reverse mortgage.  
6 (8) 'Total annual percentage rate' means the rate of  
7 interest, which provides the total amount that will  
8 be owed at loan maturity when all reverse mortgage  
9 fees and charges, including closing costs not paid  
10 to third parties, is applied to the loan advances  
11 over the term of the reverse mortgage loan.

12 "§ 53-259. Authority and Procedures Governing Reverse Mortgage  
13 Loans.

14 (a) Effective January 1, 1992, no person, firm, or corporation  
15 shall engage in the business of making reverse mortgage loans  
16 without first being approved as an authorized lender by the  
17 Commissioner, unless the lender is the North Carolina Housing  
18 Finance Agency, or is a bank, savings and loan association, or  
19 credit union, authorized to do business under the laws of this  
20 State or authorized to do business under the laws of the United  
21 States and chartered to do business in this State.

22 (b) An application for authorization to make reverse mortgage  
23 loans shall be in writing to the Commissioner and in such form as  
24 prescribed by the Commissioner. Such application shall contain  
25 the name and complete business address or addresses of the  
26 applicant. The application shall also include affirmation of  
27 financial solvency and such capitalization requirements as are  
28 required by the Commissioner. Such application shall be  
29 accompanied by a nonrefundable fee, payable to the Commissioner,  
30 of five hundred dollars (\$500.00).

31 (c) The North Carolina Housing Finance Agency, and any bank,  
32 savings and loan association, or credit union which is not  
33 required to obtain authorization to make reverse mortgage loans  
34 under subsection (a) of this section, shall, prior to making any  
35 reverse mortgage loan, notify the Commissioner of its intent to  
36 make such loan. Such notification shall be made on a form  
37 prescribed by the Commissioner and shall contain such information  
38 as required by the Commissioner.

39 (d) The Commissioner shall, upon determination that a lender is  
40 authorized to make reverse mortgage loans, issue notice of this  
41 authority to the lender, which authority shall be valid for a  
42 period of time specified by the Commissioner. The lender so  
43 notified shall display the notice prominently in any and all  
44 offices of the lender which make reverse mortgage loans.

1 Authorizations issued pursuant to this section are non-  
2 transferable and subject to an annual fee of two hundred-fifty  
3 dollars (\$250.00).

4 "§ 53-260. Application of Rules.

5 In addition to the provisions of this Article, authorized  
6 lenders shall comply with rules and regulations promulgated by  
7 the Commissioner which are reasonable and necessary to effectuate  
8 the purposes of this Article and to protect the public interest.  
9 Provided, however, that provisions in Chapters 24 or 45 of the  
10 General Statutes, and the rules promulgated thereunder, that are  
11 in conflict with this Article shall not apply to reverse mortgage  
12 transactions governed by this Article.

13 "§ 53-261. Interest.

14 Notwithstanding any other provisions of law to the contrary,  
15 the parties to a reverse mortgage loan may contract for the  
16 payment of interest at a rate agreed to by the parties. Interest  
17 shall be deferred until the earliest occurrence of one or more  
18 events specified in the reverse mortgage loan contract. Payment  
19 of interest on deferred interest shall be as agreed upon by the  
20 parties to the contract. The parties may agree that the deferred  
21 interest may be added to the outstanding balance of the loan.

22 "§ 53-262. Taxes, Insurance, and Assessment.

23 Reverse mortgage loan contracts may provide that it is the  
24 primary obligation of the borrower to pay all property taxes,  
25 insurance premiums, and assessments in a timely manner, and that  
26 the failure of the borrower to make these payments, and to  
27 provide evidence of payment to the lender, may constitute grounds  
28 for default of the loan. Provided, however, that if a borrower  
29 fails to pay property taxes, insurance premiums, or assessments,  
30 the lender may pay the amounts due, charge them to the reverse  
31 mortgage loan, and recalculate regularly scheduled payments under  
32 the loan to account for the increased outstanding loan balance.

33 "§ 53-263. Renegotiation of Loan; Calculation of outstanding  
34 balance; Prepayment.

35 (a) If the reverse mortgage loan contract allows for a change  
36 in the payments or payment options, the lender may charge a  
37 reasonable fee when payments are recalculated.

38 (b) The outstanding loan balance shall be calculated by adding  
39 the current totals of items described in subdivisions (1) through  
40 (4) below, and subtracting the current totals of all reverse  
41 mortgage loan payments made by the borrower to the lender:

42 (1) The sum of all disbursements made by the lender to  
43 the borrower, or to another party on the borrower's  
44 behalf;

- 1           (2) All taxes, assessments, insurance premiums, and  
2           other similar charges paid to date by the lender  
3           pursuant to G.S. 53-263, which charges were not  
4           reimbursed by the borrower within sixty days of the  
5           date payment was made by the lender.  
6           (3) All actual closing costs which the borrower has  
7           deferred, if a deferral provision is contained in  
8           the loan agreement; and  
9           (4) The total accrued interest to date.

10       (c) Prepayment of the reverse mortgage loan, in whole or part,  
11 shall be permitted without penalty at any time during the term of  
12 the loan.

13 "§ 53-264. Limits on Borrowers' Liability.

14       (a) When the reverse mortgage loan becomes due, if the borrower  
15 mortgaged 100% of the full value of the house then the amount  
16 owed by the borrower shall not be greater than the outstanding  
17 balance of the loan, or the fair market value of the house,  
18 whichever amount is less. If the borrower mortgaged less than  
19 100% of the full value of the house, then the amount owed by the  
20 borrower shall not be greater than the outstanding balance of the  
21 loan, or the percentage of the full value as provided in the  
22 contract, whichever amount is less.

23       (b) The lender shall enforce the debt only through the sale of  
24 the property and shall not obtain a deficiency judgment against  
25 the borrower.

26 "§ 53-265. Shared Appreciation Mortgage.

27       The parties to a reverse mortgage loan may agree to include  
28 shared appreciation as a method of allowing the lender to recover  
29 the costs and risks of reverse mortgage loans. If the reverse  
30 mortgage loan contract provides for shared appreciation, then the  
31 lender's share of the appreciation may not exceed the percentage  
32 agreed to by the parties.

33 "§ 53-266. Disclosures of Loan Terms.

34       (a) On forms prescribed by the Commissioner, all authorized  
35 lenders shall provide the following information to the  
36 Commissioner for dissemination to all counselors who provide  
37 counseling to prospective reverse mortgage borrowers:

- 38           (1) The borrower's rights, obligations, and remedies  
39           with respect to the borrower's temporary absence  
40           from the home, late payments by the lender, and  
41           payment default by the lender;  
42           (2) Conditions or events which require the borrower to  
43           repay the loan obligation;

- 1           (3) The right of the borrower to mortgage less than the  
2           full value of the home, if permitted by the reverse  
3           mortgage loan contract;
- 4           (4) The projected total annual percentage rate  
5           applicable under various loan terms, interest rates  
6           applicable at sample ages of borrowers, and the  
7           financial effect of shared appreciation, if  
8           applicable;
- 9           (5) Standard closing costs;
- 10          (6) All service fees to be charged during the term of  
11          the loan;
- 12          (7) Other information required by the Commissioner.
- 13          (b) Within ten business days after application is made by a  
14 borrower, but not less than twenty business days before closing  
15 of the loan, lenders shall provide applicants with the same  
16 information required in subsection (a) of this section, shall  
17 inform applicants that reverse mortgage counseling is advisable,  
18 and shall provide the names and addresses of reverse mortgage  
19 counselors listed with the Commissioner's office.
- 20          "§ 53-267. Information required of lender.
- 21          (a) At the closing of the reverse mortgage loan, the lender  
22 shall provide to the borrower the name of the lender's employee  
23 or agent who has been designated specifically to respond to  
24 inquiries concerning reverse mortgages. Such information shall  
25 be provided by the lender to the borrower at least annually, and  
26 whenever the information concerning the designated employee or  
27 agent changes.
- 28          (b) On an annual basis and when the loan becomes due, the  
29 lender shall issue to the borrower, without charge, a statement  
30 of account regarding the activity of the mortgage for the  
31 preceding calendar year, or for the period since the last  
32 statement of account was provided. The statement shall include  
33 the following information for the preceding year:
- 34           (1) The outstanding balance of the loan at the  
35           beginning of the statement period;
- 36           (2) Disbursements to the borrower;
- 37           (3) The total amount of interest added to the  
38           outstanding balance of the loan;
- 39           (4) Any property taxes, insurance premiums, or  
40           assessments, paid by the lender;
- 41           (5) Payments made to the lender;
- 42           (6) The total mortgage balance owed to date; and
- 43           (7) The remaining amount available to the borrower in  
44           reverse mortgage loans wherein proceeds have been

1 reserved to be disbursed in one or more lump sum  
2 amounts.

3 "§ 53-268. Effects of Lender's Default.

4 (a) A lender's failure to make loan advances to the borrower  
5 under the reverse mortgage loan contract shall be deemed the  
6 lender's default of the contract. Upon such default, the lender  
7 shall forfeit any right to collect interest or service charges  
8 under the contract. The lender's right to recovery at loan  
9 maturity shall be limited to the outstanding balance as of the  
10 date of default, minus all interest. Lenders may also be subject  
11 to other default penalties promulgated and imposed by the  
12 Commissioner.

13 (b) Subsection (a) of this section shall not apply if the  
14 lender has previously declared the borrower in default pursuant  
15 to G.S. 53-269, or if the lender makes the required loan advance  
16 within the time stated in the mortgage contract or within 30 days  
17 of receipt of notice from the borrower that the loan advance was  
18 not received.

19 "§ 53-269. Repayment Upon Borrower's Default.

20 A reverse mortgage loan contract may provide for a borrower's  
21 default, thereby triggering early repayment of the loan, based  
22 only upon one or more of the following terms and conditions:

- 23 (1) The borrower fails to maintain the residence as  
24 required by the contract;  
25 (2) The borrower sells or otherwise conveys title to  
26 the home to a third party;  
27 (3) The borrower dies, provided that the home is not  
28 the principal residence of the surviving borrower;  
29 (4) The home is not the principal residence of at least  
30 one of the borrowers for a period of 12 consecutive  
31 months for reasons of physical or mental illness;  
32 (5) For reasons other than physical or mental illness,  
33 the home ceases to be the principal residence of  
34 the borrower for a period of 180 consecutive days  
35 and is not the principal residence of another  
36 borrower under the loan, without prior written  
37 permission from the lender;  
38 (6) The borrower fails to pay property taxes, insurance  
39 premiums, and assessments pursuant to G.S. 53-262.

40 "§ 53-270. Time for Initiation of Foreclosure.

41 When a borrower's obligation to repay the reverse mortgage loan  
42 is triggered under G.S. 53-269, in addition to all rights  
43 conferred upon owners and borrowers under Chapter 45 of the  
44 General Statutes, the lender must give the borrower not less than

1 ninety (90) days notice of its intent to initiate foreclosure  
2 proceedings. If the contract so provides, interest will continue  
3 to accrue during the ninety day period.

4 "§ 53-271. Counselling Provisions.

5 (a) Subject to the approval of the Secretary of Human  
6 Resources, the North Carolina Division of Aging shall adopt rules  
7 governing the certification of reverse mortgage counselors and  
8 necessary standards for counselors, and shall establish  
9 reasonable fees for certification. The Division of Aging shall  
10 forward the names of all persons satisfying counselor  
11 certification requirements to the Commissioner.

12 (b) The Commissioner shall maintain a list of certified  
13 counselors and shall periodically provide an up-to-date copy of  
14 the list to all authorized lenders.

15 (c) The Commission shall provide to all certified reverse  
16 mortgage counselors information provided to the Commissioner by  
17 authorized lenders under G.S. 53-267.

18 "§ 53-272. Prohibited Acts.

19 Reverse mortgage lenders are prohibited from engaging in any of  
20 the following acts in connection with the making, servicing, or  
21 collecting of a reverse mortgage loan:

- 22 (1) Misrepresenting the material facts or making false  
23 promises, or engaging in a course of  
24 misrepresentation through agents or otherwise;  
25 (2) Failing to disburse funds in accordance with the  
26 terms of the reverse mortgage loan contract or  
27 other a written commitment;  
28 (3) Improperly refusing to issue a satisfaction of a  
29 mortgage;  
30 (4) Engaging in any action or practice which is unfair  
31 or deceptive, or which operates a fraud on any  
32 person;  
33 (5) Failing to comply with this Article.

34 "§ 53-273. Commissioner's Authority to Enforce; Penalties.

35 (a) The Commissioner shall promulgate the rules and regulations  
36 necessary to implement and enforce the provisions of this  
37 Article. If the Commissioner finds probable cause to believe  
38 that an authorized lender is in violation of this Article, or of  
39 any law or regulation of this State or the United States, or an  
40 agency thereof, he shall, after affording reasonable notice and  
41 opportunity to be heard to the lender, order the lender to cease  
42 and desist from such violation.

43 (b) If a lender fails to comply with or appeal the  
44 Commissioner's cease and desist order, the lender shall be

1 subject to a fine of one thousand dollars (\$1,000) for each  
2 violation that is the subject of the cease and desist order. The  
3 penalty imposed under this section shall be in addition to and  
4 not in lieu of penalties available under any other provision of  
5 law applicable to a reverse mortgage lender.

6 (c) Upon a finding that a reverse mortgage lender has violated  
7 this Article, the Commissioner may revoke, temporarily or  
8 permanently, the authority of the lender to make reverse mortgage  
9 loans.

10 (d) A person damaged by a lender's actions may file an action  
11 in civil court to recover actual and punitive damages. Attorneys  
12 fees shall be awarded to a prevailing borrower. Nothing in this  
13 Article shall limit any statutory or common law right of a person  
14 to bring an action in court for any act, nor shall this Article  
15 limit the right of the State to punish a person for the violation  
16 of any law.

17 "§ 53-274. Appeals.

18 Notwithstanding any other provision of law, an aggrieved party  
19 may, within 30 days after final decision of the Commissioner, and  
20 by written notice to the Commission, appeal directly to the North  
21 Carolina Court of Appeals for judicial review of the record. In  
22 the event of such appeal the Commission shall certify the record  
23 to the Clerk of the Court of Appeals not later than 30 days  
24 after certification. Such record shall include all memoranda,  
25 briefs, and any other documents, data, information, or evidence  
26 submitted by any party to such proceeding. All factual  
27 information contained in a report of examination or investigation  
28 submitted to or otherwise obtained by the Commissioner or his  
29 staff shall be made a part of the record unless such information  
30 is deemed confidential by the Commissioner."

31 Sec. 2. This act is effective upon ratification.



The purpose of this bill is to authorize lenders to make reverse mortgage transactions, and to authorize the Commissioner of Banks to implement the provisions of this act that regulate such transactions.

- Page 1, §§ 53-256/257      These sections establish the title and purpose of the act, and indicate the General Assembly's intent to make this chapter the governing chapter for reverse mortgages, rather than current law governing conventional mortgage transactions.
- Pages 2-3, § 53-258.      Defines terms used in this act.
- Page 3, § 53-259.      Establishes the following procedures governing RM transactions.
- lines 14-20      (1) Anyone making a RM loan on January 1, 1992 and thereafter must be approved by Commissioner of Banks, unless exempt.
- lines 21-29      (2) Applications for approval must affirm financial solvency; application fee of \$500.00.
- lines 30-36      (3) Institutions exempt from authorization must notify Commissioner of intent to make RM loans.
- lines 37-43      (4) Lender must display authorization notice; \$250.00 annual fee.
- Page 4, § 53-260.      Provides that RM lenders must comply with Commissioner's rules except that such rules that are in conflict with this act are not applicable to RM transactions.
- Page 4, § 53-261.      This section governs interest provisions of RM transactions. This section will govern such interest rather than conflicting provisions of Chapter 24, which governs interest of conventional mortgage transactions. This section allows the lender and the borrower to agree upon the interest provisions under the RM transaction.
- Page 4, § 53-262.      This section provides for the parties to agree on contract

provisions dealing with the payment of taxes, insurance premiums, and assessments. Contract provisions may provide that failure to pay any or all of these may constitute default on the part of the borrower, and allows lender to make the payments and charge them to the loan.

Page 4, § 53-263.

This section permits lenders to charge a fee for recalculating loan payments; establishes how outstanding loan balances will be calculated; and permits prepayment of the RM loan without penalty.

Page 5, § 53-264.

This section establishes limits on the borrower's liability for the loan amount, provides that the lender may only enforce the debt through sale of the property, and prohibits lender's from obtaining deficiency judgments against the borrower.

Page 5, § 53-265.

Permits the parties to agree in the contract to share in the appreciation value of the house, and limits the lender's share of the appreciation to the amount agreed to in the contract.

Page 5, § 53-266.

Requires lenders to provide specified information to the Commissioner for dissemination to RM counselors; lenders must also provide this information to applicants for RMs.

Page 6, § 53-267.

Lender must provide specified information to borrower on a regular basis.

Page 7, § 53-268.

Establishes effects of lender's default of the contract. Lender's failure to make a payment under the contract amounts to default. Upon such default, lender forfeits right to collect interest or service charges; lender's right to recovery at maturity limited to outstanding balance as of default, minus

interest; Commissioner may impose other default penalties.

Default effects do not apply to lender if the lender has previously declared the borrower in default, or if lender makes the payment within 30 days of notice from borrower that payment had not been received from lender.

Page 7, § 53-269.

Establishes effects of borrower's default. If borrower defaults, repayment of loan is triggered. Borrower's default may only be based upon specified terms and conditions.

Pages 7-8, § 53-270.

Provides for initiation of foreclosure proceedings in event of borrower's default. Lender must give borrower 90 days notice of intent to foreclose.

Page 8, § 53-271.

Authorizes Division of Aging to adopt procedures governing certification of RM counselors.

Page 8, § 53-272.

Prohibits lenders from engaging in specified acts.

Page 9, § 53-273.

Authorizes Commissioner of Banks to enforce this act and to promulgate rules necessary to implement it. Lenders not complying with Commissioner's enforcement authority subject to \$1,000 fine; Commissioner may revoke lender's authority; authorizes civil action against lender for violation of this act.

Page 9, § 53-274.

Provides for appeals by an aggrieved party directly from Commissioner's decision to Court of Appeals for judicial review.

Section 2.

Act is effective upon ratification. Lenders making RM loans after the date of ratification have until January 1, 1992 to obtain authorization from Commissioner.





1 called 'free' or 'bonus' or that are described in any other terms  
2 suggesting that they are provided free of charge.

3 (4) 'Membership camping operator' means any enterprise that  
4 solicits membership camping contracts paid for by a fee or  
5 periodic payments and has as one of its purposes camping or  
6 outdoor recreation including use of camping sites primarily by  
7 purchasers.

8 (5) 'Prepaid entertainment contract' means any contract in  
9 which:

10 (a) The buyer of a service pays for or is obligated to  
11 pay for service prior to the buyer's receipt of or  
12 enjoyment of any or all of the service;

13 (b) The seller is other than a licensed nonprofit  
14 school, college, or university; the State or any  
15 subdivision thereof; or a nonprofit religious,  
16 ethnic, or community organization; and

17 (c) The services to be performed are related to any one  
18 of the following:

19 1. Dance lessons or facilities, or any related  
20 services or events;

21 2. Matching, dating, or social club services or  
22 facilities, including any service represented  
23 as providing names of, introduction to, or  
24 opportunity to meet members of the opposite  
25 sex;

26 3. Martial arts training;

27 4. Health or athletic club services or  
28 facilities;

29 5. Camping memberships.

30 ~~The buyer of a service pays for or is obligated to pay for~~  
31 ~~service prior to the buyer's receipt of or enjoyment of any or~~  
32 ~~all of the service; and~~

33 ~~(2) The seller is other than a licensed nonprofit school,~~  
34 ~~college, or university; the State or any subdivision thereof; or~~  
35 ~~a nonprofit religious, ethnic, or community organization; and~~

36 ~~(3) The services to be performed are related to any one of the~~  
37 ~~following:~~

38 ~~a. Dance lessons or facilities, or any related services or~~  
39 ~~events;~~

40 ~~b. Matching, dating, or social club services or facilities,~~  
41 ~~including any service represented as providing names of,~~  
42 ~~introductions to, or opportunity to meet members of the opposite~~  
43 ~~sex;~~

44 ~~c. Martial arts training;~~

1 ~~d. Health or athletic club services or facilities."~~

2 Sec. 2. G.S. 66-119 reads as rewritten:

3 "§ 66-119. Contract requirements.

4 Every prepaid entertainment contract shall:

5 (1) Be in writing, fully completed, dated and signed by all  
6 contracting parties. A copy of the contract shall be given to the  
7 buyer at the time he signs the contract;

8 (2) Have a duration of service that is a precisely measured  
9 period of years or any definite part of a year;

10 (3) Contain a full statement of the buyer's rights under G.S.  
11 66-120;

12 (4) Contain, in immediate proximity to the space reserved for  
13 the signature of the buyer, in bold face type of a minimum size  
14 of 10 points, a statement of the buyer's rights under G.S. 66-  
15 121, in substantially the following form:

16 'You the buyer, may cancel this contract at any time prior to  
17 midnight of the third business day after the date of this  
18 contract. To cancel, you must notify the seller in writing not  
19 later than midnight of .....

20 (Date).'

21 (5) Contain one of the following statements, whichever is  
22 appropriate, in substantially the following form:

23 a. 'As required by North Carolina law, this seller has  
24 secured a bond by ..... (name and  
25 address of surety company), a surety authorized to  
26 do business in this State. Before signing a  
27 contract with this seller, you should check with  
28 the surety company to determine the bond's current  
29 status.', or

30  
31 b. 'As required by North Carolina law, this seller has  
32 established an escrow account.....(number)  
33 with.....(name  
34 and address of bank or savings institution).  
35 Before signing a contract with this seller you  
36 should check with the bank or savings institution  
37 to determine the current status of the escrow  
38 account.'"

39 Sec. 3. G.S. 66-120 reads as rewritten:

40 "§ 66-120. Buyer's rights.

41 Every seller of a prepaid entertainment contract must:

42 (1) Deliver to the buyer all information of a personal or  
43 private nature, including but not limited to answers to tests or

1 questionnaires, photographs, evaluations, and background  
2 information, within 30 days after request therefor;

3 (2) Refund to the buyer at least ninety percent (90%) of the  
4 pro rata cost of any unused services, within 30 days after  
5 request therefor, if:

6 a. The buyer is unable to receive benefits from the seller's  
7 services by reason of death or disability; or

8 b. The buyer relocates more than eight miles from his present  
9 location, and more than 30 miles from the seller's facility and  
10 any substantially similar facility that will accept the seller's  
11 obligation under the contract and this Article; provided, that  
12 the seller of a camping membership contract shall not be liable  
13 for a refund to the buyer due to the buyer's relocation unless  
14 the buyer's relocation precludes reasonable use of the facility  
15 by the buyer; or

16 c. The seller relocates his facility more than eight miles from  
17 its present location, or the services provided by the seller are  
18 materially ~~impaired~~. impaired; provided, if the facility is a  
19 camping facility, any relocation of the entire facility to a  
20 separate tract of real estate is presumed to impair the services  
21 materially.

22 (3) Refund to the buyer the pro rata cost of any unused  
23 services under all contracts between the parties, within 30 days  
24 after request therefor, if the aggregate price of all contracts  
25 in force between the parties exceeds one thousand five hundred  
26 dollars (\$1,500). Provided, if the contract so provides, the  
27 seller may retain a cancellation fee of not more than 25 percent  
28 (25%) of the pro rata cost of unused services on all contracts,  
29 not to exceed five hundred dollars (\$500.00)."

30 Sec. 4. G.S. 66-124 reads as rewritten:

31 "~~§ 66-124. Services not available until future date. Bond or~~  
32 Escrow Account Required.

33 (a) If, for any reason, services under a prepaid entertainment  
34 contract are not available to the buyer on the date of sale,  
35 then: Prior to the sale of any prepaid entertainment contract for  
36 services which are available on the day of sale, the seller shall  
37 purchase a surety bond issued by a surety company authorized to  
38 do business in this State, as follows:

39 (1) The seller must establish a surety bond issued by a surety  
40 company authorized to do business in this State, or establish a  
41 trust account with a licensed and insured bank or savings  
42 institution located in this State. The amount of the bond or  
43 trust account shall equal all consideration received from the  
44 buyer. The bond or trust account must remain in force until 60

~~1 days after all services of the seller are available to the buyer.  
2 The bond or trust account shall be in favor of the State of North  
3 Carolina. Any person who is damaged by any violation of this  
4 Article, or by the seller's breach of the contract for sale or  
5 any obligation arising therefrom may bring an action against the  
6 bond or trust account to recover damages suffered; provided,  
7 however, that the aggregate liability of the surety or trustee  
8 shall be only for actual damages and in no event shall exceed the  
9 amount of the bond or trust account.~~

~~10 (2) The buyer's right to cancel the contract pursuant to G.S.  
11 66-121 shall be extended until midnight of the third business day  
12 after the date upon which the services become available and the  
13 buyer is so notified. However, the buyer may waive the extension  
14 of his right to cancel by initialing a written contract provision  
15 to that effect, if in consideration for such waiver he has been  
16 allowed to buy the seller's services at a price at least  
17 twenty-five percent (25%) below the lowest price the seller will  
18 charge for similar services when the facility is available.~~

19       (1) The amount of the surety bond shall be equal to the  
20 aggregate value of outstanding liabilities to  
21 buyers, or ten thousand dollars (\$10,000),  
22 whichever is greater. For purposes of this  
23 section, 'liabilities' means the monies actually  
24 received in advance from the buyer for contract  
25 costs, less the prorated value of services rendered  
26 by the seller. The bond shall be in favor of the  
27 State of North Carolina and in a form approved by  
28 the Attorney General. The surety company shall  
29 have a duty to disclose the amount and status of  
30 the bond to the public upon request. Any person  
31 who is damaged by any violation of this Article, or  
32 by the seller's breach of the contract for sale or  
33 any obligations arising therefrom, may bring an  
34 action against the bond to recover damages  
35 suffered; provided, however, that the aggregate  
36 liability of the surety shall be only for actual  
37 damages and in no event shall exceed the amount of  
38 the bond.

39       (2) The amount of the bond shall be based upon a  
40 written sworn statement by the seller under penalty  
41 of perjury stating the seller's outstanding  
42 liabilities to buyers. A corporate seller's  
43 statement shall be signed by the president of the  
44 corporation; the statement of a partnership shall

- 1 be signed by a general partner; and the statement  
2 of a sole proprietorship shall be signed by the  
3 sole proprietor. The statement and a copy of the  
4 bond shall be filed with the Attorney General  
5 within 90 days after the first contract is sold and  
6 at 180 day intervals thereafter.
- 7 (3) The amount of the bond shall be increased or may be  
8 decreased, as necessary, to take into account  
9 changes in the seller's outstanding liabilities to  
10 buyers on a semi-annual basis.
- 11 (4) The bonding requirement of this section applies to  
12 each location of the seller in any case where a  
13 seller operates or plans to operate more than one  
14 facility in the State. A separate bond for each  
15 separately located facility shall be filed with the  
16 Attorney General.
- 17 (5) Notwithstanding any other provision of this  
18 section, no seller is required to purchase a bond  
19 in excess of one million dollars per facility.
- 20 (6) A change in ownership shall not release, cancel, or  
21 terminate liability under any bond previously  
22 established unless the Attorney General agrees in  
23 writing to the release, cancellation, or  
24 termination because the new owner has established a  
25 new bond for the benefit of the previous owner's  
26 members, or because the former owner has paid the  
27 required funds to its members.
- 28 (7) Upon application by the seller, the Attorney  
29 General shall exempt a seller from the bonding  
30 requirement if all of its unexpired contracts and  
31 present membership plans meet the following  
32 criteria: (i) no initiation fee or similar non-  
33 recurring fee is charged, and (ii) at no time is  
34 any member charged or obligated to pay for use of  
35 facilities or services more than thirty-one days in  
36 advance.
- 37 (b) If, for any reason, services under a prepaid entertainment  
38 contract are not available to the buyer on the date of sale,  
39 then:
- 40 (1) The seller shall establish a surety bond issued by  
41 a surety company authorized to do business in this  
42 State or shall establish an escrow account with a  
43 licensed and insured bank or savings institution  
44 located in this State. The surety bond or escrow

1 account shall be in the amount of \$10,000 per  
2 location or in an amount equal to all consideration  
3 received from the buyer, whichever is greater. The  
4 bond or escrow account shall be in favor of the  
5 State of North Carolina and a copy of the bond or  
6 escrow agreement shall be filed with the Attorney  
7 General prior to the sale of any prepaid  
8 entertainment contracts. The bond or escrow  
9 account shall remain in force until sixty days  
10 after all services of the seller are available to  
11 the buyer, at which time the seller shall comply  
12 with the bonding requirement of subsection (a) of  
13 this section. The escrow account shall be  
14 established and maintained only in a financial  
15 institution which agrees in writing with the  
16 Attorney General to hold all funds deposited and  
17 not to release such funds until receipt of written  
18 authorization from the Attorney General. The funds  
19 deposited will be eligible for withdrawal by the  
20 depositor after the facility has been open and  
21 providing services for sixty days and the Attorney  
22 General gives written authorization for withdrawal.  
23 Any person who is damaged by any violation of this  
24 Article, or by the seller's breach of the contract  
25 for sale or any obligation arising therefrom may  
26 bring an action against the bond or escrow account  
27 to recover damages suffered; provided, however,  
28 that the aggregate liability of the surety or  
29 escrow agent shall be for actual damages only and  
30 in no event shall exceed the amount of the bond or  
31 escrow account.

32 (2) The buyer's right to cancel the contract pursuant  
33 to G.S. 66-121 shall be extended until midnight of  
34 the third business day after the date upon which  
35 the services become available and the buyer is  
36 notified that the services are available.

37 Sec. 6. Article 21 of Chapter 66 of the General Statutes  
38 is amended by adding the following new section to read:

39 "§ 66-124.1. Recordkeeping; provision of records to the Attorney  
40 General.

41 (a) Any person or business bonded under this article shall  
42 maintain accurate records of the bond and of premium payments on  
43 it. These records shall be open to inspection by the Attorney  
44 General at any time during normal business hours.

1 (b) Any person who sells prepaid entertainment contracts shall  
2 maintain accurate records, updated as necessary, of the name,  
3 address, contract terms, and payments of each buyer of services.  
4 These records shall be open to inspection by the Attorney  
5 General, upon reasonable notice not to exceed 72 hours, at any  
6 time during normal business hours.

7 (c) On the permanent closing of a facility, the seller of the  
8 services shall provide the following information to the Attorney  
9 General within fifteen business days:

- 10       (1) A list of the names and addresses of all buyers  
11           holding unexpired contracts;  
12       (2) The original or a copy of all buyers' contracts;  
13           and  
14       (3) A record of all payments received under buyers'  
15           agreements.

16       Sec. 7. This act becomes effective October 1, 1991.

EXPLANATION 91-LN-004A

REGULATE CAMPGROUND  
MEMBERSHIPS

The purpose of this bill is to regulate the sale of campground memberships.

Section 1, page 1 lines 7-24,  
through page 2, line 29

This rewrites the Definition section of current law to include the following definitions: "camping membership", "contract cost", "contract term", and "membership camping operator"; it also rewrites the definition of "prepaid entertainment contract" to include camping memberships. Any operator who offers an agreement giving a purchaser title to or interest in the operator's campgrounds and facilities for more than 30 days is subject to regulation under this act.

Section 2, Page 3, lines 20-38

Requires that entertainment contracts contain one of two statements, as applicable; one statement indicates that the seller has secured a bond and encourages the buyer to investigate the bond's current status; the other statement indicates that the seller has established an escrow account and encourages the buyer to verify the status of that account with the appropriate bank, etc.

Section 3, page 3 lines 40-43,  
through page 4, line 15.

Requires the seller to refund to the buyer 90% of the pro rata cost of unused services, within 30 days of the request for refund, if the unused

services are due to the buyer's relocation and such relocation precludes the buyer from reasonable use of the facility;

Page 4, lines 16-21

The 90% refund also applies if the seller relocates or if the seller's services are materially impaired; if the facility is a campground, then material impairment is presumed if the entire campground facility is relocated to a separate tract of land.

Section 4, Page 4, lines 31-44  
through page 7, line 36

Amends current law to require that a bond or escrow account be established by the seller, and sets forth requirements pertaining to the bond and escrow account. Under current law, a seller is required to post a bond only if the services under a prepaid contract are not available to the buyer on the date of the sale. The proposed change in § 66-124 applies to services available on the date of sale, and to services not available until a future date.

Page 5, lines 19-38

The amount of the bond must be equal to the aggregate value of outstanding liabilities to buyers, or \$10,000, whichever is greater. Requires surety company to make information on the bond available to public upon request. Authorizes person damaged by violation of bond requirement to bring an action against the bond,

but limits remedy to actual damages not in excess of bond amount.

Page 5, lines 39-44 through  
Page 6, line 6

Requires sworn written statement by seller indicating seller's liabilities to buyers;

Page 6, lines 7-10

Seller must increase or may decrease bond, depending upon outstanding liabilities to buyer;

Page 6, lines 11-27

\*Bond requirement applies to each campground location of a seller; separate bond required for each campground facility of a seller;  
\*Seller not required to post a bond in excess of \$1 million/per facility;  
\*AG determines when liability under this section is released, cancelled, or terminated.

Page 6, lines 28-36

AG exempts seller from bonding requirement if all unexpired contracts and membership plans meet stated criteria;

Page 6, lines 37-44 through  
Page 7, line 31

Bond or escrow account required if services are not available on date of sale; bond or account must be in amount of \$10,000 per location or amount equal to all consideration received from buyer, whichever is greater. Bond or account must remain in force until 60 days after services become available, at which time seller must comply with bonding requirements of subsection (a). AG must give written approval for

withdrawal of bond or  
account funds.

Page 7, lines 32-36

Buyer may cancel within 3  
days of when services are  
made available.

Section 6, Page 7 lines 39-44  
through Page 8, line 15

Requires that persons  
subject to this article  
must keep accurate records  
of bonds and of contracts  
with buyers. AG may  
inspect records.

If campground closes  
seller must provide stated  
information to AG within  
15 days of closing.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

91-LN-005

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Car Damage Discl. Reqmnts.

(Public)

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Sponsors: Senator Speed.

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Referred to:  

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1 A BILL TO BE ENTITLED  
2 AN ACT TO EQUALIZE THE DAMAGE DISCLOSURE REQUIREMENTS FOR AUTO  
3 MANUFACTURERS AND NEW CAR DEALERS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 20-305.1 reads as rewritten:  
6 "§ 20-305.1. Automobile dealer warranty obligations.  
7 (a) Each motor vehicle manufacturer, factory branch,  
8 distributor or distributor branch, shall specify in writing to  
9 each of its motor vehicle dealers licensed in this State the  
10 dealer's obligations for preparation, delivery and warranty  
11 service on its products, the schedule of compensation to be paid  
12 such dealers for parts, work, and service in connection with  
13 warranty service, and the time allowances for the performance of  
14 such work and service. In no event shall such schedule of  
15 compensation fail to include reasonable compensation for  
16 diagnostic work as well as repair service and labor. Time  
17 allowances for the performance of warranty work and service shall  
18 be reasonable and adequate for the work to be performed. In the  
19 determination of what constitutes reasonable compensation under  
20 this section, the factors to be given consideration shall  
21 include, among others, the compensation being paid by other  
22 manufacturers to their dealers, the prevailing wage rates being  
23 paid by dealers, and the prevailing labor rate being charged by  
24 dealers, in the community in which the dealer is doing business.

1 (b) Notwithstanding the terms of any franchise agreement, it is  
2 unlawful for any motor vehicle manufacturer, factory branch,  
3 distributor, or distributor branch to fail to perform any of its  
4 warranty obligations with respect to a motor vehicle, to fail to  
5 compensate its motor vehicle dealers licensed in this State for  
6 warranty parts, or, in service in accordance with the schedule of  
7 compensation provided the dealer pursuant to subsection (a)  
8 above, and to fail to indemnify and hold harmless its franchised  
9 dealers licensed in this State against any judgment for damages  
10 or settlements agreed to by the manufacturer, including, but not  
11 limited to, court costs and reasonable attorneys' fees of the  
12 motor vehicle dealer, arising out of complaints, claims or  
13 lawsuits including, but not limited to, strict liability,  
14 negligence, misrepresentation, express or implied warranty, or  
15 rescission or revocation of acceptance of the sale of a motor  
16 vehicle as defined in G.S. 25-2-608, to the extent that the  
17 judgment or settlement relates to the alleged defective negligent  
18 manufacture, assembly or design of new motor vehicles, parts or  
19 accessories or other functions by the manufacturer, factory  
20 branch, distributor or distributor branch, beyond the control of  
21 the dealer.

22 (c) In the event there is a dispute between the manufacturer,  
23 factory branch, distributor, or distributor branch, and the  
24 dealer with respect to any matter referred to in subsections (a)  
25 and (b) above and subsection (d) below, either party may petition  
26 the Commissioner in writing, within 30 days after either party  
27 has given written notice of the dispute to the other, for a  
28 hearing on the subject and the decision of the Commissioner shall  
29 be binding on the parties, subject to rights of judicial review  
30 and appeal as provided in Chapter 150B of the General Statutes;  
31 provided, however, that nothing contained herein shall give the  
32 Commissioner any authority as to the content of any  
33 manufacturer's or distributor's warranty.

34 (d) Transportation damages. --

- 35 (1) Notwithstanding the terms, provisions or conditions  
36 of any agreement or franchise, the manufacturer is  
37 liable for all damages to motor vehicles before  
38 delivery to a carrier or transporter.
- 39 (2) If a new motor vehicle dealer determines the method  
40 of transportation, the risk of loss passes to the  
41 dealer upon delivery of the vehicle to the carrier.
- 42 (3) In every other instance, the risk of loss remains  
43 with the manufacturer until such time as the new

- 1 motor vehicle dealer or his designee accepts the  
2 vehicle from the carrier.
- 3 (4) Whenever a motor vehicle is damaged while in  
4 transit when the carrier or the means of  
5 transportation is designated by the manufacturer or  
6 distributor, or whenever a motor vehicle is  
7 otherwise damaged prior to delivery to the dealer,  
8 the dealer must:
- 9 a. Notify the manufacturer or distributor of such  
10 damage within three working days or within  
11 such additional time as authorized by the  
12 franchise agreement of the occurrence of the  
13 delivery of the motor vehicle as defined in  
14 subsection (1) of this section; and
- 15 b. Must request from the manufacturer or  
16 distributor authorization to repair the  
17 damages sustained or to replace the parts or  
18 accessories damaged.
- 19 (5) In the event the manufacturer or distributor  
20 refuses or fails to authorize repair or replacement  
21 of any such damage within ten working days after  
22 receipt of notification of damage by the dealer,  
23 ownership of the motor vehicle shall revert to the  
24 manufacturer or distributor, and the dealer shall  
25 incur no obligation, financial or otherwise, for  
26 such damage to the motor vehicle.
- 27 (5a) No manufacturer shall fail to disclose in writing  
28 to a new motor vehicle dealer, at the time of  
29 delivery of a new motor vehicle, the nature and  
30 extent of any and all damage and post-manufacturing  
31 repairs made to such motor vehicle while in the  
32 possession or under the control of the manufacturer  
33 if the cost of such post-manufacturing repairs  
34 exceeds three percent (3%) of the manufacturer's  
35 suggested retail price. A manufacturer is not  
36 required to disclose to a new motor vehicle dealer  
37 that any glass, tires or bumper of a new motor  
38 vehicle was damaged at any time if the damaged item  
39 has been replaced with original or comparable  
40 equipment.
- 41 (6) Nothing in this subsection (d) shall relieve the  
42 dealer of the obligation to cooperate with the  
43 manufacturer as necessary in filing any  
44 transportation damage claim with the carrier.

1 (e) Damage/Repair Disclosure. -- Notwithstanding the provisions  
2 of subdivision (d)(4) of this section and in supplementation  
3 thereof, a new motor vehicle dealer shall disclose in writing to  
4 a purchaser of the new motor vehicle prior to entering into a  
5 sales contract any damage and repair to the new motor vehicle if  
6 the damage exceeds ~~five~~ three percent (3%) ~~(5%)~~ of the  
7 manufacturer's suggested retail price as calculated at the rate  
8 of the dealer's authorized warranty rate for labor and parts.

9 (1) A new motor vehicle dealer is not required to  
10 disclose to a purchaser that any glass, tires or  
11 bumper of a new motor vehicle was damaged at any  
12 time if the damaged item has been replaced with  
13 original or comparable equipment.

14 (2) If disclosure is not required under this section, a  
15 purchaser may not revoke or rescind a sales  
16 contract due solely to the fact that the new motor  
17 vehicle was damaged and repaired prior to  
18 completion of the sale.

19 (3) For purposes of this section, "manufacturer's  
20 suggested retail price" means the retail price of  
21 the new motor vehicle suggested by the manufacturer  
22 including the retail delivered price suggested by  
23 the manufacturer for each accessory or item of  
24 optional equipment physically attached to the new  
25 motor vehicle at the time of delivery to the new  
26 motor vehicle dealer which is not included within  
27 the retail price suggested by the manufacturer for  
28 the new motor vehicle.

29 (f) The provisions of subsections (d) and (e) shall not apply  
30 to manufacturers and dealers of "motorcycles" as defined in G.S.  
31 20-4.01(27)."

32 Sec. 2. This act is effective upon ratification and  
33 applies to new automobiles sold on or after that date.

EXPLANATION: 91-LN-005

DAMAGE DISCLOSURE REQUIREMENTS  
FOR NEW CARS

The purpose of this bill is to make consistent the requirements of new car dealers and manufacturers to disclose damages to vehicles that have been repaired by the dealer or manufacturer prior to sale of the vehicle to a consumer. Under current law, manufacturer's must disclose in writing to the dealer, at the time of delivery of the vehicle, the nature and extent of any and all damage and post-manufacturing repairs made to the vehicle when the cost of such repairs exceeds 3% of the manufacturer's suggested retail price. Also under current law, new car dealers must disclose in writing to a purchaser any damage and repair if the damage exceeds 5% of the manufacturer's suggested retail price.

Page 4, line 6

Changes the disclosure requirement for dealers from 5% to 3% to make it consistent with the disclosure requirement of manufacturers.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-007

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Credit Repair Act.

(Public)

Sponsors: Representative Lineberry.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO REGULATE THE BUSINESS OF PROVIDING CREDIT REPAIR  
3 SERVICES.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 66 of the General Statutes is  
6 amended by adding a new Article to read:  
7 "Article 30.  
8 "Credit Repair Services Act.  
9 "§ 66-220. Short title and purpose.  
10 (a) This act shall be known and may be cited as the Credit  
11 Repair Services Act.  
12 (b) The General Assembly recognizes that many of its citizens  
13 rely heavily on favorable credit ratings in order to obtain goods  
14 and services, and that some of these citizens are unable to  
15 secure credit because of unfavorable credit histories. The  
16 General Assembly further recognizes that consumers sometimes need  
17 assistance in obtaining credit or in correcting erroneous credit  
18 histories, and that this need has given rise to the establishment  
19 of businesses organized for the purpose of providing credit  
20 repair services. The purpose of this act is to ensure that  
21 businesses offering credit repair services are providing these  
22 services in a manner that is fair and reasonable to the consuming  
23 public.  
24

1 "§ 66-221. Definitions.2 As used in this Article, unless the context requires otherwise:3 (1) 'Credit repair business' means any person who, with  
4 respect to the extension of credit by others,  
5 sells, provides, or performs, or represents that  
6 such person can or will sell, provide, or perform  
7 any of the following services in return for the  
8 payment of money or other valuable consideration:

- 9
- (a) Improving, repairing, or correcting a
- 
- 10
- consumer's credit record, history, or rating;
- 
- 11
- (b) Obtaining revolving charge card credit or
- 
- 12
- retail installment credit;
- 
- 13
- (c) Providing advice or assistance to a consumer
- 
- 14
- with regard to either paragraph (a) or (b),
- 
- 15
- above.

16 (2) 'Credit repair business' does not include:

- 17
- (a) Any bank, credit union, or savings institution
- 
- 18
- organized and chartered under the laws of this
- 
- 19
- State or the United States;
- 
- 20
- (b) Any nonprofit organization exempt from
- 
- 21
- taxation under Section 501(c)(3) of the
- 
- 22
- Internal Revenue Code (26 U.S.C. Section
- 
- 23
- 501(c)(3));
- 
- 24
- (c) Any person licensed as a real estate broker by
- 
- 25
- this State where the person is acting within
- 
- 26
- the course and scope of the license;
- 
- 27
- (d) Any person licensed to practice law in this
- 
- 28
- State where the person renders services within
- 
- 29
- the course and scope of that person's practice
- 
- 30
- as a lawyer;
- 
- 31
- (e) Any broker-dealer registered with the
- 
- 32
- Securities and Exchange Commission or the
- 
- 33
- Commodities Future Trading Commission where
- 
- 34
- the broker-dealer is acting within the course
- 
- 35
- and cope of that regulation; or
- 
- 36
- (f) Any consumer reporting agency as defined in
- 
- 37
- the Federal Fair Credit Reporting Act.

38 (3) 'Consumer' means any individual who is solicited to  
39 purchase or who purchases the services of a credit  
40 repair business.41 "§ 66-222. Prohibited Acts.42 A credit repair business, and its salespersons, agents, and  
43 representatives, and independent contractors who sell or attempt

1 to sell the services of a credit repair business, shall not do  
2 any of the following:

- 3       (1) Charge or receive any money or other valuable  
4       consideration prior to full and complete  
5       performance of the services that the credit repair  
6       business has agreed to perform for or on behalf of  
7       the consumer;
- 8       (2) Charge or receive any money or other valuable  
9       consideration solely for referral of the consumer  
10       to a retail seller or to any other credit grantor  
11       who will or may extend credit to the consumer, if  
12       the credit that is or will be extended to the  
13       consumer is upon substantially the same terms as  
14       those available to the general public;
- 15       (3) Represent that it can directly or indirectly  
16       arrange for the removal of derogatory credit  
17       information from the consumer's credit report or  
18       otherwise improve the consumer's credit report or  
19       credit standing unless the credit services business  
20       is informed that the consumer's credit report is  
21       inaccurate, contains outdated information, or is  
22       disputed in good faith by the consumer.
- 23       (4) Make, or counsel or advise any consumer to make,  
24       any statement that is untrue or misleading and  
25       which is known or which by the exercise of  
26       reasonable care should be known, to be untrue or  
27       misleading, to a consumer reporting agency or to  
28       any person who has extended credit to a consumer  
29       or to whom a consumer is applying for an extension  
30       of credit, with respect to a consumer's  
31       creditworthiness, credit standing, or credit  
32       capacity; or
- 33       (5) Make or use any untrue or misleading  
34       representations in the offer or sale of the  
35       services of a credit repair business or engage,  
36       directly or indirectly, in any act, practice, or  
37       course of business which operates or would operate  
38       as a fraud or deception upon any person in  
39       connection with the offer or sale of the services  
40       of a credit repair business.

41 "§ 66-223. Contractual Requirements.

42 (a) Effective October, 1, 1991, every contract between a  
43 consumer and a credit repair business for the purchase of the

1 services of the credit repair business shall be in writing,  
2 dated, signed by the consumer, and shall include the following:

- 3       (1) A conspicuous statement in size equal to at least  
4       ten (10) point boldface type, in immediate  
5       proximity to the space reserved for the signature  
6       of the consumer, as follows:  
7       'YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY  
8       TIME PRIOR TO MIDNIGHT OF THE THIRD (3RD) BUSINESS  
9       DAY AFTER THE DATE OF THE TRANSACTION. SEE THE  
10       ATTACHED NOTICE OF CANCELLATION FORM FOR AN  
11       EXPLANATION OF THIS RIGHT.'
- 12       (2) The terms and conditions of payment, including the  
13       total of all payments to be made by the consumer,  
14       whether to the credit repair business or to some  
15       other person;
- 16       (3) A complete and detailed description of the services  
17       to be performed and the results to be achieved by  
18       the credit repair business for or on behalf of the  
19       consumer, including all guarantees and all promises  
20       of full or partial refunds and a list of the  
21       adverse information appearing on the consumer's  
22       credit report that the credit repair business  
23       expects to have modified; and
- 24       (4) The principal business address of the credit repair  
25       business and the name and address of its agent in  
26       this State authorized to receive service of  
27       process.

28       (b) The contract shall be accompanied by a completed form in  
29 duplicate, captioned 'NOTICE OF CANCELLATION', which shall be  
30 attached to the contract and easily detachable, and which shall  
31 contain in an least ten (10) point boldface type the following  
32 statement:

33                   'NOTICE OF CANCELLATION

34  
35                   YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY  
36                   OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE  
37                   THIRD (3RD) BUSINESS DAY AFTER THE DATE THE CONTRACT IS  
38                   SIGNED.

39                   IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THIS  
40                   CONTRACT WILL BE RETURNED WITHIN TEN (10) DAYS FOLLOWING  
41                   RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

42                   TO CANCEL THIS CONTRACT, MAIL OR DELIVERY A SIGNED  
43                   AND DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER  
44                   WRITTEN NOTICE, TO

1 \_\_\_\_\_ (Name of Seller)  
 2 AT \_\_\_\_\_ (Address of Seller)  
 3 \_\_\_\_\_ (Place of Business) NOT LATER  
 4 THAN MIDNIGHT \_\_\_\_\_ (Date).

5  
6 I HEREBY CANCEL THIS TRANSACTION.

7  
8  
9 \_\_\_\_\_  
 10 Date \_\_\_\_\_ Buyer's Signature'

11 A copy of the fully completed contract and all other documents  
 12 the credit repair business requires the consumer to sign shall be  
 13 given by the credit repair business to the consumer at the time  
 14 they are signed.

15 "§ 66-224. Violations.

16 (a) If a credit repair business uses any untrue or misleading  
 17 statements in connection with a credit repair contract, fails to  
 18 fully comply with the requirements of this Article, or fails to  
 19 comply with the terms of the contract or any obligation arising  
 20 therefrom, then, upon written notice to the credit repair  
 21 business, the consumer may void the contract, and shall be  
 22 entitled to receive from the credit repair business all sums paid  
 23 to the credit repair business, and recover any additional damages  
 24 including reasonable attorney's fees.

25 (b) Any waiver by a consumer of any of the provisions of this  
 26 part shall be deemed void and unenforceable by a credit repair  
 27 business.

28 (c) Upon complaint of any person that a credit repair business  
 29 has violated the provisions of this Article, the superior court  
 30 shall have jurisdiction to enjoin that defendant from further  
 31 such violations.

32 (d) In a proceeding involving this Article, the burden of  
 33 proving an exemption or an exception from the definition of a  
 34 credit repair business shall be borne by the person claiming the  
 35 exemption or exception.

36 (e) The remedies provided herein shall be in addition to any  
 37 other remedies provided for by law or in equity.

38 (f) The violation of any provisions of this Article shall  
 39 constitute an unfair trade practice under G.S. 75-1.1.

40 "§ 66-225. Scope.

41 The provisions of this Article shall apply in all circumstances  
 42 in which any party to the contract conducted any contractual  
 43 activity, including but not limited to solicitation, discussion,

1 negotiation, offer, acceptance, signing, or performance, in this  
2 State."

3           Sec. 2. This act is effective upon ratification.

4

5

EXPLANATION: 91-LN-007

REGULATE CREDIT REPAIR  
AGENCIES

The purpose of this bill is to regulate businesses that offer credit repair services.

Page 1, lines 7-23

New article in the statutes establishing Credit Repair Act.

Page 2, lines 1-15

Defines credit repair business as regulated under this act.

lines 16-37

Exempts businesses from regulation under this act.

lines 38-40

Defines 'consumer'.

Page 2, lines 41-43 through  
Page 3, line 40

Sets forth what acts a credit repair business shall not engage in:

\* charge or collect fees in advance of full performance under the contract;

\*charge or collect fees solely for referral of a consumer to a credit grantor when the terms of such credit are substantially the same as to the general public;

\*represent that it can remove derogatory credit information unless business is informed that such derogatory information is inaccurate, outdated, or in dispute;

\*counsel any consumer to make false statements to credit reporting agency regarding consumer's credit standing or capacity;

\*make misleading statements or engage in fraud or other deceptive practice.

Page 3, lines 41-43 through  
page 4, line 27

Requires that every contract for credit repair

services be in writing,  
signed by consumer, and  
include specified  
information;

page 4, lines 28-44 through  
page 5, line 10

Every contract must be  
accompanied by a completed  
form, in duplicate, which  
is a NOTICE OF  
CANCELLATION. Such form  
notifies consumer of right  
to cancel.

Page 5, lines 15-39

Violations by the business  
gives consumer right to  
void the contract, to  
refund of all sums paid,  
and to damages and  
attorneys fees.

Waiver by consumer is void  
and unenforceable;

Superior court has  
injunctive authority;

Person claiming exemption  
from regulation has burden  
of proving that the  
exemption applies;

Remedies under this act  
are in addition to other  
remedies available under  
law;

Violation is an unfair  
trade practice.

Page 5, lines 41-43 through  
page 6, line 2.

Article applies to any  
contractual activity.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

91-LN-008

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Building Inspector Duties.

(Public)

Sponsors: Senator Speed.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND CHAPTERS 160A AND 153A OF THE GENERAL STATUTES  
3 RELATING TO THE DUTIES OF LOCAL BUILDING INSPECTORS.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. G.S. 160A-425 reads as rewritten:  
6 "§ 160A-425. Defects in buildings to be corrected.  
7 When a local inspector finds any defects in a building, or  
8 finds that the building has not been constructed in accordance  
9 with the applicable State and local laws, or that a building  
10 because of its condition is dangerous or contains fire hazardous  
11 conditions, it shall be his duty to notify the owner ~~or~~ and the  
12 occupant of the building of its defects, hazardous conditions, or  
13 failure to comply with law. ~~The owner or occupant shall each~~  
14 ~~immediately remedy the defects, hazardous conditions, or~~  
15 ~~violations of law in the property he owns. In the event that the~~  
16 deficiencies or defects were the result of a failure to construct  
17 or alter the building in accordance with the applicable State and  
18 local laws, it shall be the duty of the local inspector also to  
19 use reasonable diligence to locate and notify the person who  
20 constructed or altered the building of the defects, hazardous  
21 conditions, or failure to comply with the law. The owner of the  
22 building or the person who constructed or altered the building  
23 shall each be responsible for remedying the defects, hazardous  
24 conditions, or violations of law in the property. Provided,

1 however, that if the defects, hazardous conditions, or violations  
2 of law are the results of the builder's failure to construct or  
3 alter the building in accordance with applicable law, he shall  
4 bear the primary responsibility for remedying the defects. The  
5 person primarily responsible for remedying the defects shall  
6 immediately do so.

7           Sec. 2. G.S. 153A-365 reads as rewritten:

8 "§ 153A-365. Defects in buildings to be corrected.

9   If a local inspector finds any defect in a building, or finds  
10 that the building has not been constructed in accordance with the  
11 applicable State and local laws and local ordinances and  
12 regulations, or finds that a building because of its condition is  
13 dangerous or contains fire-hazardous conditions, he shall notify  
14 the owner ~~or~~ and the occupant of the building of its defects,  
15 hazardous conditions, or failure to comply with law. ~~The owner~~  
16 ~~and the occupant shall each immediately remedy the defects,~~  
17 ~~hazardous conditions, or violations of law in the property each~~  
18 ~~owns.~~ In the event that the deficiencies or defects were the  
19 result of a failure to construct or alter the building in  
20 accordance with the applicable State and local laws and local  
21 ordinances and regulations, it shall be the duty of the local  
22 inspector also to use reasonable diligence to locate and notify  
23 the person who constructed or altered the building of the  
24 defects, hazardous conditions, or failure to comply with the law.  
25 The owner of the building or the person who constructed or  
26 altered the building shall each be responsible for remedying the  
27 defects, hazardous conditions, or violations of law in the  
28 property. Provided, however, that if the defects, hazardous  
29 conditions, or violations of law are the results of the builder's  
30 failure to construct or alter the building in accordance with  
31 applicable law, he shall bear the primary responsibility for  
32 remedying the defects. The person primarily responsible for  
33 remedying the defects shall immediately do so."

34           Sec. 3. This act is effective upon ratification and  
35 shall apply to inspections made on or after that date.

EXPLANATION: 91-LN-008

BUILDING INSPECTOR DUTIES

The purpose of this bill is to expand the duty of local building inspectors to include notification of the builder of defects in the building, when such defects were the result of the builder's failure to construct or alter the building in accordance with building code requirements.

Section 1

Imposes the duty on City building inspectors.

Page 1, lines 22-24

This language makes the owner of the building or the person who constructed or altered it, responsible for remedying the defects that result from building code violations.

Page 2, lines 1-6

This language makes the building primarily responsible for remedying defects that are the result of the failure to construct or alter in compliance with building code requirements, and requires that such corrections be made immediately.

Page 2, lines 18-32

Imposes the same duty on County inspectors.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-009

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Attorneys Fees/New Homes.

(Public)

Sponsors: Representative Hasty.

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE COURT TO AWARD REASONABLE ATTORNEYS' FEES  
3 TO PREVAILING PLAINTIFFS IN CLAIMS INVOLVING HOME CONSTRUCTION.  
4 The General Assembly of North Carolina enacts:  
5                   Section 1. Chapter 6 of the General Statutes is amended  
6 by adding a new section to read:  
7 "§ 6-21.6. Attorneys' fees in cases involving newly constructed  
8                   homes.  
9 In any civil claim brought by a homeowner or homeowners  
10 association against a general contractor, whether licensed under  
11 Article 1 of Chapter 87 of the General Statutes or unlicensed in  
12 violation of Article 1, for fraud, unfair or deceptive commercial  
13 act or practice, negligence, breach of contract, breach of  
14 express warranty or breach of implied warranty arising out of the  
15 construction or alteration of one or more residential dwelling  
16 units in this State, the court shall award reasonable attorneys'  
17 fees to the homeowner or homeowners association if that party  
18 substantially prevails in its claim. Such attorneys' fees shall  
19 be based on the actual time expended by counsel for the homeowner  
20 or homeowners association unless the court determines as a matter  
21 of fact that specific time expended was not reasonably necessary  
22 to prevail in the claim."  
23                   Sec. 2. This act is effective upon ratification and  
24 applies to claims filed on or after that date.

This purpose of this bill is to address the problem that consumers face when legal costs to pursue claims of incompetence against general contractors often meet or exceed the potential remedy for such claims. The bill amends the chapter of the General Statutes governing liability for court costs. The bill provides that:

- page 1, lines 9-12                    If a homeowner or homeowner's association sues a general contractor,
- page 1, lines 12-16                for fraud, unfair or deceptive commercial practices, negligence, breach of contract, or breach of warranty, related to the construction or alteration of one or more residential dwelling units,
- page 1, lines 16-18                the court shall award reasonable attorneys' fees to the homeowner or association if that party substantially prevails in its claim.
- page 1, lines 18-22                The court must base the award of attorneys' fees on actual time expended by counsel, unless the court determines as a matter of fact that the time expended was not reasonably necessary to prevail in the claim.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-010A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Construction Audit Follow-up.

(Public)

Sponsors: Representative Hasty.

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO REQUIRE THE GENERAL CONTRACTORS LICENSING BOARD AND THE  
3 CODE OFFICIALS QUALIFICATION BOARD TO IMPLEMENT RECOMMENDATIONS  
4 OF THE STATE AUDITOR AND TO REPORT IMPLEMENTATION STATUS TO THE  
5 JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS.  
6 The General Assembly of North Carolina enacts:  
7                   WHEREAS the Legislative Research Commission undertook to  
8 study consumer protection issues, including those relating to the  
9 elderly, during the 1989-91 biennium; and  
10                  WHEREAS the consumer protection study revealed, among  
11 other things, serious problems and deficiencies relating to  
12 regulation and enforcement of business practices in the home  
13 construction industry; and  
14                  WHEREAS the LRC Consumer Protection Study Committee  
15 requested a State Audit of the performance of boards and  
16 commissions established to regulate the home construction  
17 industry; and  
18                  WHEREAS the final report of the State Auditor was  
19 presented to the Consumer Protection Study Committee at its  
20 November 16 meeting; and  
21                  WHEREAS the audit report indicated that although the  
22 boards and commissions audited were in compliance with their  
23 statutory authority and duties, improvements are needed in the  
24 overall regulatory system and in certain board management

1 practices in order to ensure that the general welfare of the  
2 consuming public is protected; Now, therefore,  
3 The General Assembly of North Carolina enacts:

4           Section 1. The General Contractors Licensing Board  
5 shall implement all recommendations specifically addressed to the  
6 Board in the State Auditor's Performance Audit Report on  
7 Regulation of the Home Construction Industry, November, 1990;  
8 provided that the Board is not required to implement or report on  
9 any recommendations in the Auditor's report that are addressed to  
10 other agencies included in the audit, or that require action not  
11 within the Board's statutory or regulatory authority. The Board  
12 shall report to the Joint Legislative Commission on Governmental  
13 Operations, not later than October 1, 1991, on the implementation  
14 status of the applicable recommendations.

15           Sec. 2. The North Carolina Code Officials Qualification  
16 Board shall implement all recommendations specifically addressed  
17 to the Board in the State Auditor's Performance Audit Report on  
18 Regulation of the Home Construction Industry, November, 1990;  
19 provided that the Board is not required to implement or report on  
20 any recommendations in the Auditor's report that are addressed to  
21 other agencies included in the audit, or that require action not  
22 within the Board's statutory or regulatory authority. The Board  
23 shall report to the Joint Legislative Commission on Governmental  
24 Operations, not later than October 1, 1991, on the implementation  
25 status of the applicable recommendations.

26           Sec. 3. This act is effective upon ratification.

91-LN-010A EXPLANATION:

AUDIT CONSTRUCTION FOLLOW-UP

The purpose of this bill is to require the General Contractors Licensing Board and the Code Officials Qualification Board to implement the recommendations specifically addressed to the Boards in the Auditor's report, and to report on the progress of that implementation to Governmental Operations in October, 1991. The bill provides that the Boards are not required to report on or to implement any of the recommendations in the report that are directed towards other auditees, or that are beyond the Boards' statutory or regulatory authority to implement.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-011A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Contractor License Limits.

(Public)

Sponsors: Representative Easterling.

Referred to:

1                                   A BILL TO BE ENTITLED  
2 AN ACT TO DECREASE THE PROJECT COST MINIMUM FOR APPLICABILITY OF  
3 CONTRACTORS LICENSURE REQUIREMENTS AND TO CLARIFY EXEMPTION  
4 PROVISIONS.  
5 The General Assembly of North Carolina enacts:  
6                   Section 1. G.S. 87-1 reads as rewritten:  
7 "§ 87-1. 'General contractor' defined; exceptions.  
8 For the purpose of this Article any person or firm or  
9 corporation who for a fixed price, commission, fee or wage,  
10 undertakes to bid upon or to construct or who undertakes to  
11 superintend or manage, on his own behalf or for any person, firm  
12 or corporation that is not licensed as a general contractor  
13 pursuant to this Article, the construction of any building,  
14 highway, public utilities, grading or any improvement or  
15 structure where the cost of the undertaking is ~~forty-five~~ twenty-  
16 five thousand dollars (~~\$45,000~~) (\$25,000) or more, or undertakes  
17 to erect a North Carolina labeled manufactured modular building  
18 meeting the North Carolina State Building Code, shall be deemed  
19 to be a 'general contractor' engaged in the business of general  
20 contracting in the State of North Carolina.  
21 This section shall not apply to persons or firms or  
22 corporations furnishing or erecting industrial equipment, power  
23 plant equipment, radial brick chimneys, and monuments.

1 This section shall not apply to any person or firm or  
2 corporation who constructs or alters a building on land owned by  
3 that person, firm or corporation ~~when provided~~ such building is  
4 ~~intended for use by that person, firm or corporation after~~  
5 ~~completion, solely for occupancy by that person and his family,~~  
6 ~~firm, or corporation after completion; and provided further that,~~  
7 ~~if such building is not occupied solely by such person and his~~  
8 ~~family, firm or corporation for at least 12 months following~~  
9 ~~completion, it shall be presumed that the person, firm or~~  
10 ~~corporation did not intend such building solely for occupancy by~~  
11 ~~that person and his family, firm or corporation.~~

12 This section shall not apply to any person engaged in the  
13 business of farming who constructs or alters a building on land  
14 owned by that person and used in the business of farming, when  
15 such building is intended for use by that person after  
16 completion, and provided that the cost of the construction or  
17 alteration is less than forty-five thousand dollars (\$45,000)."

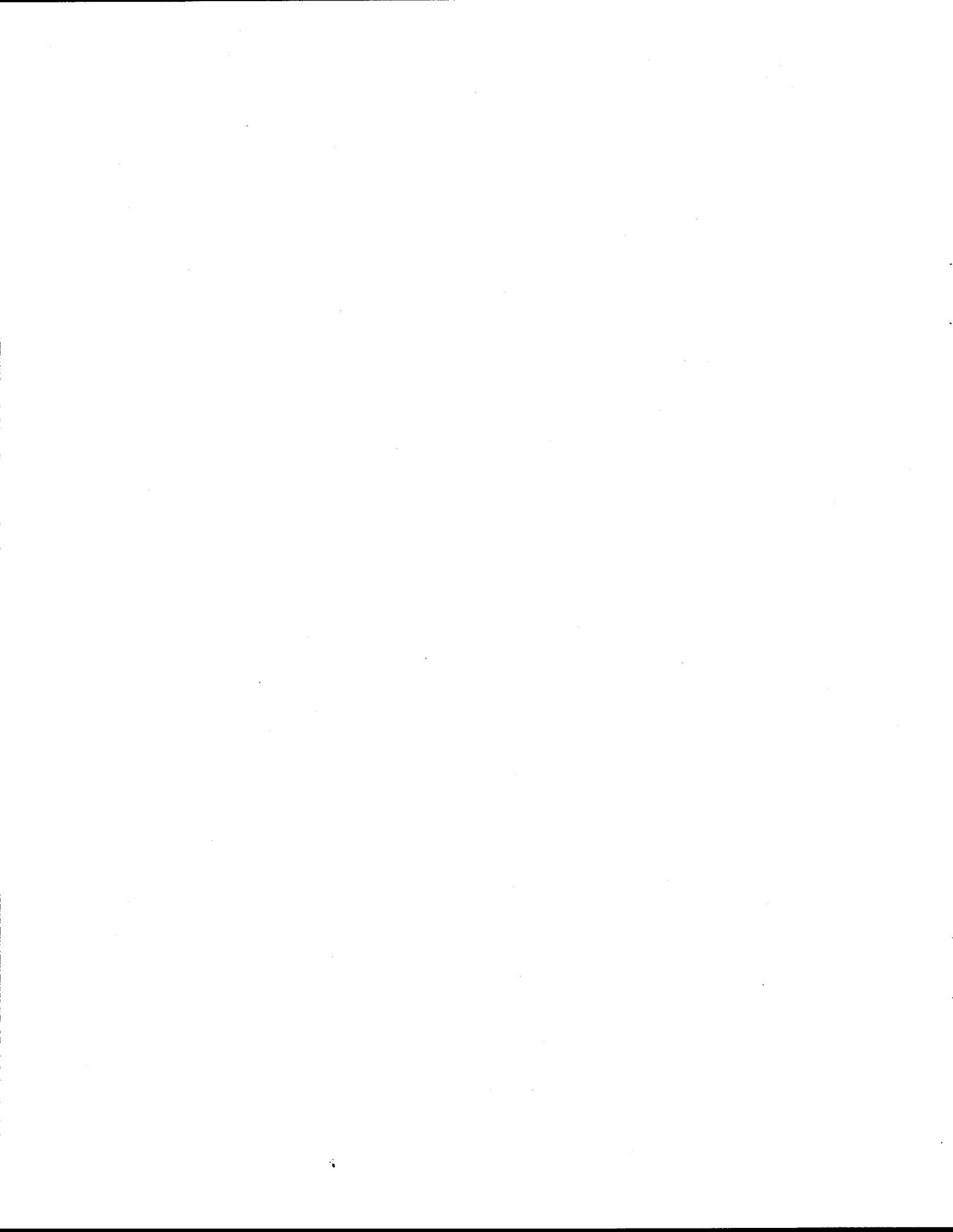
18 Sec. 2. G.S. 87-14 reads as rewritten:

19 "§ 87-14. Regulations as to issue of building permits.

20 Any person, firm or corporation, upon making application to the  
21 building inspector or such other authority of any incorporated  
22 city, town or county in North Carolina charged with the duty of  
23 issuing building or other permits for the construction of any  
24 building, highway, sewer, grading or any improvement or structure  
25 where the cost thereof is to be ~~forty-five~~ twenty-five thousand  
26 dollars ~~(\$45,000)~~ (\$25,000) or more, shall, before he be entitled  
27 to the issuance of such permit, furnish satisfactory proof to  
28 such inspector or authority that he or another person contracting  
29 to superintend or manage the construction is duly licensed under  
30 the terms of this Article to carry out or superintend the same,  
31 and that he has paid the license tax required by the Revenue Act  
32 of the State of North Carolina then in force so as to be  
33 qualified to bid upon or contract for the work for which the  
34 permit has been applied; and it shall be unlawful for such  
35 building inspector or other authority to issue or allow the  
36 issuance of such building permit unless and until the applicant  
37 has furnished evidence that he is either exempt from the  
38 provisions of this Article or is duly licensed under this Article  
39 to carry out or superintend the work for which permit has been  
40 applied; and further, that the applicant has paid the license tax  
41 required by the State Revenue Act then in force so as to be  
42 qualified to bid upon or contract for the work covered by the  
43 permit; and such building inspector, or other such authority,  
44 violating the terms of this section shall be guilty of a

1 misdemeanor and subject to a fine of not more than fifty dollars  
2 (\$50.00)."

3           Sec. 3. This act is effective upon ratification and  
4 applies to bids made, projects undertaken, or permits applied for  
5 on or after that date.



EXPLANATION: 91-LN-011A

REDUCE PROJECT COST AMOUNT FOR  
REQUIRING GENERAL CONTRACTORS  
LICENSE; TIGHTEN OWNERSHIP  
EXEMPTION.

The purpose of this bill is twofold: (1) to ensure competence in the general contracting profession by requiring a license for any project that costs \$25,000 or more to build. Current law requires the license only if the cost is \$45,000 or more; and (2) to tighten up the exemption from licensure for persons who own the land.

Page 1, lines 15-16

This reduces the project cost limit that triggers requirement of a general contractors license from \$45,000 to \$25,000.

Page 2, lines 5-6

This language requires that in order to be exempt from licensure the person must own the land and verify when applying for a permit that it is his or her intent to occupy the building after completion.

Page 2, lines 7-11

If after completion the person does not occupy the building for at least 12 months, then the person will be presumed not to have intended such occupancy, which presumption implies fraud when applying for the building permit. (The owner could rebut the presumption with evidence supporting his intent to occupy and showing that circumstances required him to vacate earlier than 12 months after completion.)

Page 2, lines 12-17

This language exempts from the licensure requirements farmers who construct buildings on their farm land for their own use, provided that such construction costs less than \$45,000.

Page 2, lines 19-44,  
through page 3, line 2

This amends the section which imposes regulations on building departments to secure proof

from a person applying for a building permit that the such person is licensed as a general contractor, or is exempt from licensure. The amendment incorporates the reduction in the project cost amount from \$45,000 to \$25,000, as provided in section 1 of the bill.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

S

D

91-LN-012A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Contractor Board Authority.

(Public)

Sponsors: Senator Speed.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO CLARIFY THE DISCIPLINARY AUTHORITY OF THE GENERAL  
3 CONTRACTORS LICENSING BOARD, AND TO PROVIDE THAT A PERSON WHO  
4 PREFERS CHARGES AGAINST A LICENSEE IS AN AGGRIEVED PARTY UNDER  
5 CHAPTER 150B.  
6 The General Assembly of North Carolina enacts:  
7 Section 1. G.S. 87-11(a) reads as rewritten:  
8 "(a) The Board shall have the power to revoke and suspend the  
9 certificate of license of any general contractor licensed  
10 hereunder and invoke other disciplinary measures, reprimand, and  
11 probationary terms, or any combination thereof, against a  
12 licensee who is found guilty of any has committed fraud or deceit  
13 in obtaining a license, or gross negligence, incompetency or  
14 misconduct in the practice of his profession, or willful  
15 violation of any provisions of this Article. Any person may  
16 prefer charges of such fraud, deceit, negligence or misconduct  
17 against any general contractor licensed hereunder; such charges  
18 shall be in writing and sworn to by the complainant and submitted  
19 to the Board. Such charges, unless dismissed without hearing by  
20 the Board as unfounded or trivial, shall be heard and determined  
21 by the Board in accordance with the provisions of Chapter ~~150A~~  
22 150B of the General Statutes. After a hearing, and upon a  
23 finding that a licensee has engaged in conduct which justifies  
24 disciplinary action under this section, the Board may suspend the

1 imposition, in whole or in part, of any lawful sanction, and may  
2 condition the suspension upon correction by the licensee of any  
3 work deficiencies resulting from the conduct that gave rise to  
4 disciplinary action. A person who prefers charges against a  
5 general contractor in accordance with this section is a 'person  
6 aggrieved' within the meaning of Chapter 150B of the General  
7 Statutes."

8           Sec. 2. G.S. 143-151.17(c) reads as rewritten:

9 "(c) A denial, suspension, or revocation of a certificate issued  
10 under this Article shall be made in accordance with Chapter 150B  
11 of the General Statutes. A person making a verified complaint in  
12 accordance with this section is a 'person aggrieved' within the  
13 meaning of Chapter 150B of the General Statutes."

14           Sec. 3. This act is effective upon ratification and  
15 applies to verified complaints submitted and charges preferred on  
16 or after that date.

The purpose of this bill is: (1) to authorize the General Contractors Licensing Board to suspend a contractor's license and to impose other disciplinary measures against a licensee who has committed fraud or other act in violation of the Chapter; and to further authorize the Board to suspend disciplinary action against a licensee, and condition the suspension upon the licensee correcting the problem; and (2) to change the legal status of persons filing complaints with the General Contractors Licensing Board and with the Code Officials Qualifications Board to that of a 'person aggrieved' so that the complainants may appeal the Board's decision under the Administrative Procedures Act.

Page 1, lines 8-12

Authorizes Board to suspend license and to invoke other disciplinary measures when a licensee has committed fraud or other violation.

Page 1, lines 22-24,  
thru page 2, line 3

Authorizes the Board to suspend the imposition of its disciplinary measure and to condition suspension upon correction of the problem.

Page 2, lines 4-13

Recent NC case law holds that when a licensing Board conducts a hearing concerning a licensee's conduct, the Board's decision affects only the rights of the licensee, not the rights of the party who may have filed the complaint against the licensee.

Page 2, lines 4-7

Makes complainant against a general contractor a 'person aggrieved' and thus able to appeal the Board's decision under the Administrative Procedures Act.

Page 2, lines 11-13

Makes complainant against a building inspector a 'person aggrieved' and thus able to appeal the Code Officials Qualification Board decision under the Administrative Procedures Act.



## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-014A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Homeowners Recovery Fund.

(Public)

Sponsors: Representative Hasty.

Referred to:

- 1 A BILL TO BE ENTITLED  
 2 AN ACT TO ESTABLISH A HOMEOWNERS RECOVERY FUND UNDER THE  
 3 SUPERVISION OF THE GENERAL CONTRACTORS LICENSING BOARD.  
 4 The General Assembly of North Carolina enacts:  
 5 Section 1. Chapter 87 of the General Statutes is  
 6 amended by adding the following new Article to read:  
 7 "Article 1A  
 8 "Homeowners Recovery Fund.  
 9 "§ 87-15.5. Definitions.  
 10 As used in this Article, unless the context clearly requires  
 11 otherwise:  
 12 (1) 'Applicant' means the owner of a single-family  
 13 residential dwelling unit who has suffered a  
 14 reimbursable loss because of the dishonest or  
 15 incompetent conduct of a general contractor in  
 16 constructing or altering the residential dwelling  
 17 unit and has filed an application for reimbursement  
 18 from the Homeowner's Recovery Fund.  
 19 (2) 'Board' means the General Contractors Licensing  
 20 Board.  
 21 (3) 'Fund' means the Homeowners Recovery Fund.  
 22 (4) 'Dishonest conduct' means fraud or deceit in  
 23 obtaining a license under Article 1 of Chapter 87  
 24 of the General Statutes, or fraud or deceit by a

- 1           general contractor in the practice of general  
2           contracting, or the willful violation of Article 1  
3           of Chapter 87 of the General Statutes.  
4           (5) 'General contractor' means a person licensed under  
5           Article 1 of Chapter 87 of the General Statutes, or  
6           a person who has failed to obtain a license in  
7           violation of Article 1.  
8           (6) 'Incompetent conduct' means incompetency or gross  
9           negligence by a general contractor in the practice  
10           of his profession.  
11           (7) 'Reimbursable losses' are only those losses of  
12           money which;  
13           a. result from the dishonest or incompetent  
14           conduct of a general contractor which conduct  
15           occurred on or after October 1, 1991;  
16           b. are not paid by or on behalf of, in whole or  
17           in part, the contractor whose conduct caused  
18           the loss; and  
19           c. are not covered by any bond, surety agreement,  
20           or insurance contract.

21 "§ 87-15.6. Homeowners Recovery Fund.

22           (a) There is established the Homeowners Recovery Fund. The  
23 Fund shall be administered by the General Contractors Licensing  
24 Board under rules and regulations adopted by it. The purpose of  
25 the Fund is to reimburse homeowners who have suffered financial  
26 loss as a result of the dishonest or incompetent conduct in North  
27 Carolina of a general contractor.

28           (b) The Board shall impose a surcharge of not more than fifty  
29 dollars (\$50.00) annually on each license application or renewal,  
30 which surcharge shall be deposited by the Board into the Fund.  
31 The Board shall maintain a minimum level of one hundred fifty  
32 thousand dollars (\$150,000) in the Fund for recovery and guaranty  
33 purposes. The Board may suspend the surcharge for any year for  
34 which the Fund balance is at least one hundred fifty thousand  
35 dollars (\$150,000) and the Board determines by unanimous vote  
36 that sufficient funds are available to meet likely disbursements  
37 for that year and that an adequate reserve will remain after such  
38 disbursements. The Board shall receive, manage, and disburse  
39 funds as may from time to time be appropriated or voluntarily  
40 contributed to it, or otherwise received by it, as provided in  
41 this Article. G.S. 87-7 shall not apply to the Homeowners  
42 Recovery Fund.

1 "§ 87-15.7. Fund administration.

2 (a) All sums received by the Board pursuant to this Article  
3 shall be held in a separate account known as the Homeowners  
4 Recovery Fund. Deposits to and disbursements from the Fund  
5 account shall be subject to the written direction of the Board  
6 under rules established by it.

7 (b) The Board shall adopt regulations and rules of procedure  
8 governing management of the Fund account, presentation and  
9 processing of applications for reimbursement, processing of  
10 reimbursable claims, and subrogation or assignment of the rights  
11 of any reimbursed applicant.

12 (c) The Board may use or otherwise expend monies in the Fund  
13 for the following purposes:

- 14 (1) To make reimbursements on approved applications;  
15 (2) To purchase insurance to cover such losses, in  
16 whole or in part, deemed appropriate by the Board  
17 and not inconsistent with the purposes of the Fund;  
18 (3) To invest such portions of the Fund as are not  
19 currently needed to reimburse losses and maintain  
20 adequate reserves, and as are permitted to be made  
21 by fiduciaries under State law; and  
22 (4) To pay the expenses of the Board to administrate  
23 the Fund, including employment of Counsel to  
24 prosecute subrogation claims.

25 (d) The Board shall submit annually a report to the State  
26 Treasurer accounting for all monies collected and expended in the  
27 administration of the Homeowners Recovery Fund.

28 "§ 87-15.8. Application for reimbursement.

29 (a) An application for reimbursement from the Homeowners  
30 Recovery Fund may be filed by any person who has suffered a  
31 monetary loss as the result of dishonest or incompetent conduct  
32 by a general contractor in the construction, alteration, or  
33 repair of a single-family residential dwelling unit owned by such  
34 person.

35 (b) The Board shall prepare a form of application for  
36 reimbursement from the Homeowners Recovery Fund. Effective  
37 October 1, 1991, the Board may consider applications for  
38 reimbursement of losses that arise after that date and which are  
39 caused by the dishonest or incompetent conduct of any general  
40 contractor committed on or after that date; provided, however,  
41 that such reimbursement shall be made only to the extent to which  
42 such losses are not bonded or otherwise covered, protected, or  
43 reimbursed, and provided further that the applicant for  
44 reimbursement has exhausted all civil remedies against the

1 contractor or his or her estate, has obtained a judgment in his  
2 favor in such action which judgment has been unsatisfied, and has  
3 complied with other applicable rules of the Board.

4 (c) The Board shall investigate all applications made and may  
5 reject or allow such claims in whole or in part based on and to  
6 the extent that monies are available in the Homeowners Recovery  
7 Fund. The Board shall have complete discretion to determine the  
8 order and manner of payment of approved applications. All such  
9 payments shall be a matter of privilege and not of right and no  
10 person shall have any right in the Homeowners Recovery Fund as a  
11 third party beneficiary or otherwise. No attorney shall be  
12 compensated by the Board for prosecuting an application before  
13 it.

14 "§ 87-15.9. Subrogation for reimbursement made.

15 In the event reimbursement is made to an applicant under this  
16 Article, the Board shall be subrogated in the reimbursed amount  
17 and may bring such action as deemed advisable against the  
18 contractor, his assets or his estate. The Board may enforce any  
19 claims it may have for restitution or otherwise, and may employ  
20 and compensate consultants, agents, legal counsel, and other such  
21 employees as it deems necessary and appropriate to carry out its  
22 authority under this section."

23 Sec. 2. This act is effective upon ratification.

The purpose of this bill is to provide a source of financial compensation to homeowners who have suffered a financial loss as the result of incompetent conduct of a general contractor. This fund is similar, but not identical, to other recovery funds established by statute. A comparison of the main provisions of the proposed fund and four other funds is attached to this bill.

Page 1-2

Defines the terms used in the act.

Page 2, lines 24-42

Establishes the recovery fund under the General Contractors Licensing Board;

Requires Board to impose a surcharge on all licensees of up to \$50 annually, as necessary to maintain a minimum Fund balance of \$150,000; authorizes Board to suspend the surcharge for any year in which there is at least \$150,000 in the Fund and the Board determines that the Fund balance is adequate to meet likely disbursements and that adequate reserves will be present after such disbursements.

Page 3, lines 1-26

Establishes fund administration requirements, authorizes Board to adopt rules to administer the fund, and to expend monies from the fund, as provided.

Page 3, lines 27-44

Establishes eligibility for payment from fund; requires that applicants for payment have exhausted all civil remedies against the contractor, and have obtained a judgment against the contractor that has not been satisfied.

Page 4, lines 3-21

Establishes Board's discretion in reviewing and acting on claims against the fund. Prohibits award of attorneys fees for prosecuting a claim before the Board.

If Board reimburses an applicable from the fund, the Board may bring an action against the contractor to recover the amount paid from the fund.

## GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

H

D

91-LN-015A

(THIS IS A DRAFT AND NOT READY FOR INTRODUCTION)

Short Title: Contractors Review Committee.

(Public)

Sponsors: Representative Hasty.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO ESTABLISH THE NORTH CAROLINA RESIDENTIAL CONTRACTORS  
3 REVIEW COMMITTEE.  
4 The General Assembly of North Carolina enacts:  
5 Section 1. Chapter 87 of the General Statutes is  
6 amended by adding the following new article to read:  
7 "Article 1A  
8 "Residential Contractors Review Committee.  
9 "§ 87-15.5. Definitions.  
10 As used in this Article, unless the context clearly requires  
11 otherwise:  
12 (1) 'Board' means the State Licensing Board for General  
13 Contractors;  
14 (2) 'Residential construction' means the construction  
15 of one-family or two-family residential dwelling  
16 units which are required to conform to the North  
17 Carolina Uniform Residential Building Code;  
18 (3) 'Residential contractor' means any person, firm or  
19 corporation, whether licensed or not, who for a  
20 fixed price, commission, fee, or wage, undertakes  
21 to bid upon or to construct or who undertakes to  
22 superintend or manage on his own behalf or for any  
23 person, firm or corporation that is not licensed as  
24 a general contractor under Article 1 of this

1           chapter, the construction of one-family or two-  
2           family residential dwelling units which are  
3           required to conform to the North Carolina Uniform  
4           Residential Building Code.

5           (4) 'Residential Review Committee', or 'Review  
6           Committee' means the North Carolina Residential  
7           Contractors Review Committee established by this  
8           article.

9    "§ 87-15.6. Residential Contractors Review Committee  
10           established; membership.

11           (a) The North Carolina Residential Contractors Review Committee  
12 is established within the State Licensing Board for General  
13 Contractors. The purposes of the Review Committee are to assure  
14 the expeditious implementation and enforcement of the licensing  
15 provisions applicable to residential contractors under Article 1  
16 of this Chapter, and to provide a process whereby homeowners may  
17 bring residential construction-related complaints to a single  
18 entity for review and referral to the appropriate governmental  
19 authority.

20           (b) The Residential Review Committee shall consist of seven  
21 members, two of whom shall be appointed by the Speaker of the  
22 House of Representatives, two of whom shall be appointed by the  
23 Lieutenant Governor, two of whom shall be appointed by the  
24 Governor, and one of whom shall be the member of the Board who  
25 has as the larger part of his business the construction of  
26 residences and is the holder of an unlimited General Contractors  
27 license. The appointees of the Speaker of the House of  
28 Representatives shall be an architect registered under Chapter 83  
29 of the General Statutes, and a residential contractor who holds  
30 an intermediate general contractor's license as defined in G.S.  
31 87-10. The appointees of the Lieutenant Governor shall be an  
32 engineer registered under Chapter 89C of the General Statutes and  
33 practicing structural engineering, and a residential contractor  
34 who holds a limited general contractor's license as defined in  
35 G.S. 87-10. Of the Governor's appointees, one shall be a  
36 municipal or county building inspector and one shall be a member  
37 of the public at large who has no ties to the construction  
38 industry.

39           (c) The terms of the initial members of the Residential Review  
40 Committee shall be staggered so that the terms of one member  
41 appointed by the Governor and the members appointed by the  
42 Lieutenant Governor expire December 31, 1993, and one member  
43 appointed by the Governor and the members appointed by the  
44 Speaker of the House of Representatives expire December 31, 1994.

1 Terms of these appointees shall thereafter be for a period of  
2 three years. The term of the member appointed from the Board  
3 shall be coterminous with Board membership. Vacancies shall be  
4 filled for the unexpired term by the original appointing  
5 authority. No member of the Residential Review Committee shall  
6 serve more than two complete consecutive terms.

7 (d) The members of the Residential Review Committee shall receive  
8 per diem and necessary travel and subsistence expenses in  
9 accordance with G.S. 93B-5 for all time actually spent conducting  
10 business of the Review Committee. All expenses, salaries, and  
11 per diem authorized under this Article shall be an expense of the  
12 Board and shall be paid from funds received under the provisions  
13 of Article 1 of this Chapter and shall in no manner be an expense  
14 to the State.

15 (e) The Residential Review Committee shall select from its  
16 members a chairman, a vice chairman, and a secretary who shall  
17 serve for one year or until their successors are elected and  
18 qualified. No two offices may be held by the same person. The  
19 Residential Review Committee, with the concurrence of the Board,  
20 may engage adequate staff as the Review Committee deems necessary  
21 to perform its duties.

22 (f) The Residential Review Committee shall meet at least three  
23 times each year, and as often as necessary to carry out its  
24 duties under this Article. Five members shall constitute a  
25 quorum.

26 "§ 87-15.7. Residential Review Committee duties and  
27 responsibilities.

28 The Residential Review Committee may adopt procedures to carry  
29 out the purpose of this article, and shall:

- 30 (1) Review, investigate, and make recommendations to  
31 the Board for the timely disposition of all  
32 complaints involving residential construction,  
33 including those referred from the Attorney  
34 General's office and other State and local  
35 agencies;  
36 (2) Investigate all complaints involving residential  
37 construction which are properly submitted and not  
38 dismissed as unfounded or trivial. Complaints which  
39 in the Review Committee's opinion necessitate on-  
40 site investigation may be investigated by one or  
41 more members of the Board, the Residential Review  
42 Committee, or the staff, provided that at least one  
43 of the persons conducting such investigation is  
44 licensed as a general contractor or has

- 1           demonstrated expertise in the area of residential  
2           construction;  
3           (3) Conduct follow-up activities, where appropriate, to  
4           determine if orders issued by the Board pursuant to  
5           complaints disposed of after hearing have been  
6           carried out.  
7           (4) Establish procedures for the timely response to  
8           persons making complaints related to residential  
9           construction, which procedures shall include the  
10           referral, where appropriate, of all such complaints  
11           to the proper government agencies for action.  
12           (5) Establish procedures for sharing information with  
13           other construction-related Boards and Commissions  
14           to enhance the enforcement of laws and regulations  
15           pertaining to the residential construction  
16           industry.  
17           (6) Make recommendations to the Board for the  
18           promulgation of rules necessary for the Residential  
19           Review Committee to carry out its duties under this  
20           article.  
21           (7) Conduct other activities as may be lawfully  
22           delegated to it by the Board.

23           Sec. 2. G.S. 87-2 reads as rewritten:

24   "§ 87-2. Licensing Board; organization.  
25    There is created the State Licensing Board for General  
26    Contractors consisting of ~~seven~~ nine members which include five  
27    ~~general contractors—~~ contractors, one registered engineer  
28    practicing structural engineering, and two three public members  
29    appointed by the Governor Governor. Except as otherwise provided  
30    in this section, members shall be appointed for staggered five-  
31    year terms. Of the general contractor members, one One member  
32    shall have as the larger part of his business the construction of  
33    highways; one member shall have as the larger part of his  
34    business the construction of public utilities; one member shall  
35    have as the larger part of his business the construction of  
36    buildings; one member shall be either a highway, utility, or  
37    building contractor; one member and two shall have as a larger  
38    part of his business— their businesses the construction of  
39    residences; residences, one of whom shall be the holder of an  
40    unlimited general contractors license. and two The public members  
41    shall be public members who have no ties with the construction  
42    industry and who shall represent the interests of the public at  
43    large. One of the three public members shall be the person who  
44    serves as public member of the North Carolina Residential

1 Contractors Review Committee. The term of the public member  
2 appointed from the Review Committee shall be coterminous with  
3 membership on the Review Committee. Members shall serve until the  
4 expiration of their respective terms and until their successors  
5 are appointed and qualified. Vacancies occurring during a term  
6 shall be filled by appointment of the Governor for the remainder  
7 of the unexpired term. The Governor may remove any member of the  
8 Board for misconduct, incompetency, or neglect of duty. No Board  
9 member shall serve more than two complete consecutive terms.

10 Sec. 3. G.S. 87-11 reads as rewritten:

11 "§ 87-11. Revocation of license; charges of fraud, negligence,  
12 incompetency, etc.; hearing thereon; reissuance of certificate.

13 (a) The Board shall have the power to revoke the certificate of  
14 license of any general contractor licensed hereunder who is found  
15 guilty of any fraud or deceit in obtaining a license, or gross  
16 negligence, incompetency or misconduct in the practice of his  
17 profession, or willful violation of any provisions of this  
18 Article. Any person may prefer charges of such fraud, deceit,  
19 negligence or misconduct against any general contractor licensed  
20 hereunder; such charges shall be in writing and sworn to by the  
21 complainant and submitted to the Board. Such charges, unless  
22 dismissed without hearing by the Board as unfounded or trivial,  
23 shall be heard and determined by the Board in accordance with the  
24 provisions of Chapter 150A 150B of the General Statutes. Charges  
25 pertaining to residential construction matters that are properly  
26 submitted to the Board or that are referred from the Attorney  
27 General or other State or local agency, shall be promptly  
28 referred by the Board to the North Carolina Residential  
29 Contractors Review Committee for preliminary review, response,  
30 investigation, and recommendations for Board action.

31 (b) The Board shall adopt and publish guidelines, consistent  
32 with the provisions of this Article, governing the suspension and  
33 revocation of licenses.

34 (c) The Board shall establish and maintain a system whereby  
35 detailed records are kept regarding complaints against each  
36 licensee. This record shall include, for each licensee, the date  
37 and nature of each complaint, investigatory action taken by the  
38 Board, any findings by the Board, and the disposition of the  
39 matter.

40 (d) The Board may reissue a license to any person, firm or  
41 corporation whose license has been revoked: Provided, three five  
42 or more members of the Board vote in favor of such reissuance for  
43 reasons the Board may deem sufficient.

1 The Board shall immediately notify the Secretary of State of  
2 its findings in the case of the revocation of a license or of the  
3 reissuance of a revoked license.

4 A certificate of license to replace any certificate lost,  
5 destroyed or mutilated may be issued subject to the rules and  
6 regulations of the Board.

7 (e) The Board shall promulgate the rules necessary to implement  
8 the provisions of Article 1A of this Chapter. In promulgating  
9 these rules the Board shall consider the recommendations of the  
10 North Carolina Residential Contractors Review Committee."

11 Section 4. Sections 1 and 3 of this act shall become  
12 effective October 1, 1991. Section 2 of this act is effective  
13 upon ratification and shall apply to appointments made on or  
14 after that date.

The purpose of this bill is to establish within the General Contractors Licensing Board a Committee that will be responsible for investigating and reviewing all complaints received by the Board regarding residential construction.

Page 1, lines 9-24

Defines terms used in the bill.

Page 2, lines 9-19

Establishes the Review Committee and its purposes to assure the expeditious implementation and enforcement of Chapter 87 licensing provisions that are applicable to residential contractors, and to provide a process whereby homeowners may bring residential construction-related complaints to a single entity for review and referral.

Page 2, lines 20-35

Establishes the membership of the Committee. Member of the Board who is Residential Contractor is a member of the Committee.

Page 2, lines 36-44

Establishes terms of committee members.

Page 3, lines 4-22

Establishes other matters pertaining to the committee such as expense reimbursement, officers, and meetings.

Page 3, lines 23-43, and  
Page 4, lines 1-20

This language sets forth the duties and responsibilities of the Committee.

Page 4, lines 23-44

Amends Chapter 87 to change the size and membership categories of the General Contractors Licensing Board.

lines 24-25

Two members added; one a structural engineer, the other a public member. Member who represents highway, utility, or building, changed to be member who represents residential construction.

lines 40-44

One of the public members on the Board will be the public member who serves on the Review Committee.

Page 5, lines 23-28

Requires Board to submit all complaints received pertaining to residential construction to the Review Committee.

Page 5, line 39

Increases by two the number of Board members required to vote in favor of reinstating a revoked license.

Page 6, lines 4-7

Authorizes Board to promulgate rules to implement the Review Committee.

APPENDIX D





# STATE OF NORTH CAROLINA

## PERFORMANCE AUDIT REPORT

### REGULATION OF THE HOME CONSTRUCTION INDUSTRY

NOVEMBER 1990

OFFICE OF THE STATE AUDITOR  
EDWARD RENFROW  
STATE AUDITOR

General Statute 143-170.1 requires disclosure of printing costs for public documents of which 200 copies are printed. The Office of State Auditor has printed 350 copies of this report at a cost of \$322.00, or 92 cents per copy.

ADVANCE DISTRIBUTION OF REPORT ON AUDIT

In accordance with G.S. § 147-64.5 and G.S. § 147-64.6(c)(14), copies of this report have been distributed to the following:

EXECUTIVE BRANCH

The Honorable James G. Martin  
The Honorable James C. Gardner

Mr. C. C. Cameron  
Mr. Fred W. Talton  
Mr. James E. Long

Governor  
Lieutenant Governor and Co-Chairman of the  
Joint Legislative Commission on Governmental  
Operations  
Executive Assistant for Budget and Management  
Controller, State of North Carolina  
Commissioner, Department of Insurance

LEGISLATIVE BRANCH

The Honorable Josephus L. Mavretic  
The Honorable Henson P. Barnes  
The Honorable Kenneth C. Royall, Jr.  
The Honorable R. D. Beard

The Honorable Ted Kaplan  
The Honorable Donald R. Kincaid  
The Honorable Dennis A. Wicker

The Honorable Johnathan Rhyne, Jr.  
Mr. Thomas L. Covington

Speaker and Co-Chairman of the Joint Legislative  
Commission on Governmental Operations  
President Pro-Tempore of the N.C. Senate  
Deputy President Pro-Tempore of the N.C. Senate  
Speaker Pro-Tempore of the N.C. House of  
Representatives  
Majority Leader of the N.C. Senate  
Minority Leader of the N.C. Senate  
Majority Leader of the N.C. House of  
Representatives  
Minority Leader of the N.C. House of  
Representatives  
Director, Fiscal Research Division

Appointees of the Joint Legislative Commission on Governmental Operations

Senator J. Richard Conder  
Senator Helen R. Marvin  
Senator David R. Parnell  
Senator Aaron W. Plyler, Sr.  
Senator James F. Richardson  
Senator Robert G. Shaw  
Senator Marvin Ward

Representative Daniel H. DeVane  
Representative David H. Diamont  
Representative Theresa H. Esposito  
Representative George M. Holmes  
Representative Doris R. Huffman  
Representative R. Samuel Hunt, III  
Representative Howard Hunter, Jr.  
Representative Betty H. Wiser

Legislative Study Committee on Consumer Protection Issues

Senator A. D. Guy, Co-Chairman  
Representative John C. Hasty, Co-Chairman  
Senator Fountain Odom  
Senator Robert G. Shaw  
Senator James D. Speed  
Representative Ruth M. Easterling  
Representative Bradford V. Ligon

Representative Albert S. Lineberry  
Representative Coy C. Privette  
Representative Barney P. Woodard  
Ms. Wanda Hunt, Public member  
Mr. Bentley Leonard, Public member  
Mr. James Parker, Public member  
Mr. Frank Richardson, Public member

In addition, advance copies of the performance audit report were distributed to:

Mr. Bruce Armstrong

Chairman, North Carolina Licensing Board for  
General Contractors

Mr. Daschiel Propes

Chairman, Code Officials Qualification Board

Mr. Sam Snowdon

Chairman, Building Code Council

Mr. Brian Miller

Chairman, State Board of Examiners of Plumbing  
and Heating Contractors

Mr. William T. Easter

Chairman, State Board of Examiners of Electrical  
Contractors

Advance copies have been made available to give the above-named individuals adequate time to review and digest the content of this report. Copies of this report will be available for public release by the Office of State Auditor on the date shown below.

November 16, 1990

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STATE OF NORTH CAROLINA

Office of the State Auditor

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STATE AUDITOR

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October 10, 1990

The Honorable James G. Martin, Governor  
Senator A.D. Guy, Co-chair  
Representative John C. Hasty, Co-Chair  
Legislative Consumer Protection Study Committee  
James E. Long, Commissioner of Insurance  
Mr. F. O. Bates, Executive Secretary  
State Board of Examiners of Plumbing and Heating  
Mr. Robert L. Brooks, Jr., Secretary-Treasurer  
State Board of Examiners of Electrical Contractors  
Mr. Henry M. McCown, Secretary-Treasurer  
General Contractors Licensing Board  
Members of the General Assembly

Ladies and Gentlemen:

We have completed a performance audit of the State Regulation of the Home Construction Industry as requested by the Legislative Study Committee on Consumer Issues. The audit did not include a review of manufactured housing. As provided by statute, we submit this report for your consideration.

The purposes of this audit were to determine if the Building Code Council, Code Officials Qualification Board, General Contractors Licensing Board, and the various other Boards having responsibility for regulating the home construction industry were in statutory compliance, and to provide the Committee, Boards, agency management, and the General Assembly with our findings and recommendations relative to areas where we believe improvements in the regulatory system and program management can be achieved.

During the course of the audit we also identified areas where the General Statutes need to be re-written and areas in which we believe the system is weak and new statutes may be necessary.

This report contains an overview of the Building Code Council, Code Officials Qualification Board, General Contractors Licensing Board, and the various other Boards whose powers and duties relate to the State's regulation of the home construction industry. Appropriate officials have reviewed the report, and their written remarks are included in the Appendix.

We wish to express our appreciation to Mr. Snowdon, Mr. Armstrong, members and staff of the various Boards, management and staff of the Department of Insurance's Engineering Division, and the local government personnel who participated in the personal interviews and the mail survey for the courtesy and cooperation extended to us during the audit.

Respectfully Submitted,

  
Edward Renfrow



## EXECUTIVE SUMMARY

### Program Overview (See page 8)

Regulation of the Home Construction Industry is a joint effort of state and local government in North Carolina.

The Building Code Council is authorized to write and maintain the North Carolina State Building Code.

Chapter 87 of the North Carolina General Statutes has become a "melting pot" of laws regulating the construction industry. The primary licensing boards authorized in Chapter 87 are the State Licensing Board for General Contractors, the State Board of Examiners of Plumbing and Heating Contractors, and the State Board of Examiners of Electrical Contractors.

The Code Official Qualifications Board is responsible for training and certifying code officials. Code officials are the inspectors who are employed by local governments to enforce the state building code.

The Department of Insurance, Engineering Division has general supervision of the code administration and enforcement in cooperation with local jurisdictions. The Engineering Division staffs the Building Code Council and the Code Official Qualifications Board.

### Building Code Council (See page 11)

Based on our review of applicable statutes and an examination of the Building Code Council's activities, we found the Council in compliance with the General Statutes. However, during the audit we identified areas where improvement in the regulation system and program management could be achieved.

At its September 1990 meeting, the Council adopted a policy which provides that all Code amendments approved each year from October through September would be printed and available on November 1 and would become effective on January 1, except those relative to an imminent safety hazard, which would be effective

when ratified. However, the Council also provided that amendments must be accepted by the Code official before the effective date at the request of the owner or his agent.

We recommend that the Council reconsider its policy that an amendment is effective on demand, and that it adhere to its stated policy of annual amendments only, except for imminent safety hazards.

The Council has recently adopted a model for a new comprehensive North Carolina Uniform Residential Building Code. The model is published by the Council of American Building Officials (CABO). The CABO One and Two Family Dwelling Code is an all-trades Code so the entire residential Code is contained within one book, and it is published in loose-leaf format. A committee is presently engaged in preparing the necessary state amendments and is expected to present them to the Council in December 1990.

We support the Council's action relating to a new Residential Code.

The Commissioner of Insurance is responsible for code administration and enforcement. Part of this function is assigned to the Engineering Division, Code Consultant Section, which has a professional staff of engineers and architects. The Code Consultants have two primary duties; one is plan review and the other is code interpretation.

Management estimates that five consultants spend approximately 100 hours per week reviewing plans and specifications for code compliance.

We recommend that the designers pay a fee for plan review services. Based on our analysis, we believe the department could generate approximately \$250,000 per year.

We also recommend that management consider whether stock plans for single family homes should be subject to a formal review.

### **Code Officials Qualifications Board** (See page 16)

Based on our review of the applicable statutes and an examination of the Qualification Board's activities, we found the Qualification Board in compliance with the General Statutes. However, during our audit we identified areas where improvement in the regulatory system and program management could be achieved.

As currently constructed, the Engineering Division Director serves as chairman of the Qualifications Board. Since the Division staff has responsibility for certifying code officials, investigating complaints, and testifying at disciplinary hearings, a perceived conflict of interest may exist as a result of the Director's dual role as division head and presiding officer at disciplinary hearings.

In our opinion, the Division Director has worked to avoid any potential conflicts. However, the current structure provides the opportunity for questions to arise concerning disciplinary procedure. Accordingly, we recommend that the presiding officer for disciplinary hearings be a member other than the division director in those years in which the director is elected as Chairman of the Board for business meetings.

The Building Code Council has established a minimum of ten inspections per building.

Based on our evaluation of the inspection program and problems that arise with Home Construction, we recommend that the Council consider adding a mandatory foundation inspection. We recommend that the Council expand its policy to require contractors to call for any special inspections that may be required and to assure that insulation inspection is performed at an appropriate time.

Based on our analysis of the Qualifications Board and our survey of inspection departments, we believe the Qualifications Board could improve the inspection program. We recommend

the establishment of a mandated continuing education program and the establishment of appropriate quality control programs.

### **Construction Licensing Boards** (See page 25)

The General Assembly enacted legislation in 1925 to establish a regulatory agency over the construction industry in the State to protect the public. Chapter 87 of the General Statutes has become a melting pot of laws regulating the construction industry. Licensing boards were established to regulate certain construction specialties and to oversee the provisions for establishing competency through examination and licensing and to administer the appropriate disciplinary action. Each board operates under a different set of rules, with diverse authority for types of disciplinary actions, fees, and methods of operation. Interpretation of legislative intent is also diverse between boards.

We found that the North Carolina construction licensing boards are basically in compliance with the statutory provisions regarding their licensing and disciplinary functions. However, during the audit we identified areas where improvement in the regulatory system and program management could be achieved. These changes are necessary to assure that the regulatory system meets the statutory intent of protecting the "public health, safety and welfare."

### **State Licensing Board for General Contractors** (See page 27)

The State Licensing Board for General Contractors (General Contractors Licensing Board or GCLB) has the primary responsibility for the regulation of contractors involved in the construction of buildings, residences, highways, and public utilities.

Based on our analysis of General Contractors Licensing Board's management of complaints, we recommend several actions including:

- Establish clear guidelines for the staff to use when considering whether a case should be presented to the Review Committee.

- Establish an investigator position with a technical background in the construction industry.
- Establish clear guidelines for following up on decisions by the Review Committee.
- Involve the Board members more directly in considering complaints.
- Establish a calendar that will allow the GCLB to dispose of cases in a more timely manner.
- Establish clear procedures for managing complaints referred from the Consumer Protection Division of the Attorney General's Office.
- Establish procedures to properly manage referrals to other boards.
- Review the existing rules relating to financial responsibility to assess whether additional audited financial statements would enhance the monitoring of the contractors financial stability.

### Conclusion

While the General Contractors Licensing Board is in compliance with the General Statutes, we question whether the level of effort exerted by the GCLB and the staff is consistent with what is required to adequately protect the public from incompetent or negligent contractors. Strict compliance with the General Statutes does not relieve the Board from its obligation to establish effective enforcement programs to regulate the industry. In our opinion, the Board should reassess all operating policies and procedures to assure that they are appropriately comprehensive to deal with problem contractors. Once new policies and procedures are adopted, it is incumbent on the GCLB to aggressively enforce the regulations.

### Structure and Management of the Home Construction Regulatory System (See page 36)

Based on our evaluation of the current regulatory system, we believe there are fundamental issues concerning the structure and management of the system that must be addressed.

### Statutory Revisions

Throughout the audit we identified questions relating to statutory authority, statutory intent, and the lack of statutory authority that, in our opinion, hinders the effective regulation of the industry. Specific issues that should be evaluated relate to the variances in disciplinary authority, the adequacy of the statutory authority granted to inspection departments, whether the laws adequately protect the consumer, whether the laws include sufficient definitions, and whether the \$45,000 threshold is too high to adequately regulate the industry.

In our opinion, a comprehensive review of the statutes regulating the Home Construction Industry is necessary to assure that the statutes are appropriately comprehensive and provide the necessary authority to protect the health, safety, and welfare of the public.

### Creation of a Recovery Fund

When a consumer encounters problems with construction contractors, several options are available. Options include judicial remedies through the court system as well as administrative remedies through the regulatory system. However, if the contractor is insolvent, the consumer may experience a "moral victory" while still confronting significant costs to correct the problem and cover legal expenses. In our opinion, the lack of financial remedies is a problem in the current regulatory structure.

We recommend that the General Assembly take steps to establish a recovery fund.

## Structure of the Regulatory System

In North Carolina, multiple boards are involved in regulating the home construction industry. We do not believe the current regulatory system can respond effectively to the complex problems frequently encountered in the home construction industry. During the audit, we observed minimal coordination between the regulatory boards to collectively address deficiencies. In our opinion, the decentralized regulatory system results in fragmented, inconsistent management that does not provide adequate protection for the consumer.

We believe serious consideration should be given to consolidating the existing regulatory functions into a single agency. While such a move would represent a significant reorganization, the change would provide a structure for a more comprehensive and coordinated approach to regulating the industry.

We recommend that the General Assembly develop a plan for creating a single construction regulatory agency.

The programmatic areas relating to the Building Code Council and Code Officials Qualification Board should remain administratively attached to the Department of Insurance.

## Responses from Appropriate Officials

A draft copy of the audit report was provided to the following officials for their review and comment:

- . Building Code Council (See page 42);
- . The Department of Insurance (See page 43);
- . The Code Officials Qualification Board (See page 43);
- . The General Contractors Licensing Board (See page 47);
- . The State Board of Examiners of Electrical Contractors (See page 53); and,
- . The State Board of Examiners of Plumbing and Heating Contractors (See page 56).

See Exhibits A through E for the responses to the audit report. Throughout the audit report we reference appropriate sections of the responses to our findings and recommendations.

Readers are encouraged to review the responses to our audit findings and recommendations.

## AUDIT OBJECTIVES

Under the North Carolina General Statutes, the State Auditor is responsible for reviewing the economy, efficiency, and effectiveness of state government programs. These performance audits examine the operating policies, practices, controls, and activities to identify where the State may improve its management and its use of public resources.

The Legislative Consumer Protection Study Committee requested that the Office of the State Auditor conduct a performance audit for the express purpose of determining statutory compliance of the various Boards created by the State whose powers and duties relate to the home construction industry.

In our audit survey of the various Occupational Licensing Boards, the Building Code Council, Code Officials Qualification Board, the General Contractors Licensing Board, and the Engineering Division of the Department of Insurance, which also has statutory responsibilities, the audit objectives were to:

Determine the statutory responsibilities of each auditee.

Examine the activities of each auditee and determine if the activities were in compliance with the statutes.

Determine if each auditee prudently exercised its statutory powers and adequately discharged its statutory duties.

## AUDIT SCOPE AND METHODOLOGY

The audit scope included a comparative analysis of the General Statutes with the program activities of the auditees. In addition, we focused on:

The Building Code Council's activities related to amending and publishing the North Carolina State Building Code (Code).

The Code Officials Qualification Board's education and certification program and its response to homeowners' complaints.

The General Contractors Licensing Boards' management of complaints.

The program activities of the Code Consultant Section, Engineering Division.

This report does not provide a detailed audit of, nor an opinion on, any financial statements of the Boards or the Division. The Occupational Licensing Boards are responsible for securing financial audits from Certified Public Accountants, and the Department of Insurance is audited as part of the Comprehensive Annual Financial Report of the State of North Carolina.

Performance audits are conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and endorsed by the American Institute of Certified Public Accountants.

We reviewed the building Code amendments proposed to the Building Code Council, the Council's minutes, and the disposition of the proposed amendments for the three year period ended March 1990.

We reviewed the Code Officials Qualification Board's policies and procedures for training, certifying, and disciplining Code officials.

We reviewed the General Contractors Licensing Boards' policies and procedures for managing homeowners' complaints and disciplinary actions.

Our methodology included:

Review of the General Statutes, Administrative Rules, administrative policies and procedures, and other relevant matter.

Analysis of a sample of case files resulting from the Code Officials Qualification Board's disciplinary hearings.

Interviews with members and staff of the various boards, division management, local government managers, managers and staff of inspection jurisdictions, and comparable regulatory personnel of other states.

Statistical analysis of the General Contractors Licensing Board's management of complaints and disciplinary hearings.

A survey was mailed to all the local inspection Jurisdictions and the results were tabulated and analyzed.

Other auditing procedures deemed to be necessary.

## PROGRAM OVERVIEW

Regulation of the home construction industry is a joint effort of state and local government in North Carolina. Municipalities initiated building regulation and inspection prior to state involvement. These regulations were enforced by the local authorities, and, although the State now provides many of the regulatory functions, local government is still responsible for Code enforcement and inspections.

The State of North Carolina began regulating the building industry in 1905 when the General Assembly enacted a state building law applicable to all towns with populations in excess of 1,000. The statute required the towns to have a building inspector to enforce the law and gave general oversight of the inspectors to the Commissioner of Insurance. Counties were brought under the statute in 1969.

In 1925, the General Assembly enacted legislation to establish a regulatory agency over the construction industry. Chapter 87 of the General Statutes has become a "melting pot" of laws regulating the construction industry. Licensing boards were established to regulate certain construction specialties and to oversee the provisions for establishing competency through examination and licensing and to administer the appropriate disciplinary action. Each board operates under a different set of rules, with diverse authority for types of disciplinary actions, fees, and methods of operation. The primary licensing boards authorized in Chapter 87 are the State Licensing Board for General Contractors, the State Board of Examiners of Plumbing and Heating Contractors, and the State Board of Examiners of Electrical Contractors.

In 1933, the General Assembly established the Building Code Council (Council), and authorized it to write and maintain the North Carolina State Building Code. G.S. 143-136(a) delineates the composition of the Council. The Code is uniform and mandatory statewide.

In 1977, the General Assembly established the Code Officials Qualification Board and made it responsible for training and certifying Code officials. Code officials are the inspectors who are employed by local governments to enforce the state building Code. G.S. 143-151.9 lists the various professional areas from which Code Officials Qualification Board members must be selected.

The Department of Insurance, Engineering Division has general supervision of the Code administration and enforcement in cooperation with local Jurisdictions. The Engineering Division staffs the Building Code Council and the Code Officials Qualification Board.

In addition to the responsibilities assigned to the boards, the Consumer Protection Division of the Attorney General's Office receives complaints from consumer's relating to the Home Construction Industry. The Consumer Protection Specialists try to mediate complaints first, then refer the complaints to the appropriate licensing boards for further action. The Attorney General's staff is not authorized to proceed against contractors unless they are guilty of deceptive trade practices and fraud involving a substantial segment of the citizenry. The statutes authorize the contractors' boards to seek injunctive relief against unlicensed contractors through the Attorney General's Office.

### **Focus of the Audit**

The General Assembly's Consumer Protection Study Committee requested a performance audit of the various Boards established by State law whose powers and duties relate to the home construction industry. However, the Committee indicated specific interest in the statutory compliance of the Building Code Council, Code Officials Qualification Board, and the General Contractors Licensing Board.

A preliminary audit survey of all the various entities related to the home construction industry identified areas for possible improvements in the State regulation of the industry that warranted detailed audit work.

Some field work was performed at several of the Occupational Licensing Boards, however, the primary focus of the audit was on the Building Code Council, Code Officials Qualification Board, Engineering Division of the Department of Insurance, the General Contractors Licensing Board, State Board of Examiners of Electrical Contractors, and the State Board of Examiners of Plumbing and Heating Contractors.

In the course of determining if there was statutory compliance, we determined there were other areas which needed the attention of management and of the General Assembly.

We have incorporated appropriate findings and recommendations in the report.

**AUDIT FINDINGS AND RECOMMENDATIONS**



## BUILDING CODE COUNCIL

The Building Code Council (Council), created by G. S. 143-136 et seq., is authorized to establish and maintain the North Carolina State Building Code (Code). There are thirteen Council members drawn from the various areas of industry, including architects, engineers, contractors, state and local government employees, and public members. The Council meets quarterly.

The General Statutes require the Code regulations to be "reasonably necessary for the protection of the occupants of the building or structure, its neighbors, and members of the public at large" and have "a reasonable and substantial connection with the public health, safety, morals or general welfare...."

Building codes are developed by adopting a national model, amending that model to meet the specific needs of the entity (for example, to accommodate the differences in the topography of the mountains and the coast in North Carolina), and then adopting the amended version as the state Code.

The Code is uniform and mandatory statewide and currently comprises six areas:

<u>Volume #</u>	<u>Title</u>	<u>Application*</u>
I	General Construction (Loose-Leaf Binder)	All buildings and structures except one- and two-family homes
1-B	Residential (Bound Book)	Limited to one- and two-family homes
1-C	Accessibility (Handicap) (Bound Book)	All Buildings
II	Plumbing (Loose-Leaf Binder)	All buildings and structures
III	Mechanical (Loose-Leaf Binder)	All buildings and structures
IV	Electrical (Loose-Leaf Binder)	All buildings and structures

\*Certain farm buildings are statutorily excluded from the Code.

The Engineering Division of the Department of Insurance provides staff to the Council. There are four personnel positions, comprised of one engineer and two support staff. The staff's primary responsibilities are to draft the amendments, provide clerical support, and to print and distribute the Code and its amendments.

### Statutory Compliance

Based on our review of the applicable statutes and an examination of the Building Code Council's activities, we found the Council in compliance with the General Statutes. However, during our audit we identified areas where improvement in the regulating system and program management could be achieved.

## **Building Code Amendments**

The Council meets quarterly and generally amends the Code at each meeting. We reviewed the Council's minutes for the last three years and found that the Code had been amended 334 times. Of those amendments, 102 were to the Residential Code and apply directly to single-family homes, and another 68 apply indirectly to them because they are amendments to the electrical, mechanical, and plumbing Codes. Since many of the amendments are complex with multiple components, the total number of changes is greater than the number of amendments. The effect of the frequent and numerous amendments is a dynamic Code which constantly changes.

It has been the Council's practice to make amendments effective upon ratification. Therefore they apply to permits issued immediately after the Council meeting. Although the amendments may be distributed as soon as possible, there is a time lag between the amendment's effective date and the printing and distribution of approximately 1,800 copies.

At its September 1990 meeting, the Council adopted a policy which provides that all Code amendments approved each year from October through September would be printed and available on November 1 and would become effective on January 1, except those relative to an imminent safety hazard, which would be effective when ratified. However, the Council also provided that ratified amendments must be accepted by the Code official before the effective date at the request of the owner or his agent.

In our opinion, the State would benefit from a policy that afforded Code users adequate time to learn approved changes before they were implemented. While the Council has taken steps to establish annual amendments to the Code, the exception granted may continue to create problems for those who must comply with or enforce the code.

### **RECOMMENDATION**

We recommend that the Council reconsider its policy that an amendment is effective on demand, and that it adhere to its stated policy of annual amendments only, except for imminent safety hazards.

#### *Council's Response:*

*See page 42 for the Building Code Council's response to the recommendation.*

## **Residential Building Code**

The North Carolina Uniform Residential Building Code (Residential Code) is a bound book last printed in 1985. An Accumulative Supplement containing the amendments adopted from the 1985 printing to September 13, 1988 was published, and those adopted subsequent to that date were distributed quarterly. The "Building" Codes, Volume I for commercial and Volume IB for residential, do not cover the electrical, mechanical, and plumbing areas so the same Codes, Volumes II, III, and IV, are used for both residential and commercial construction.

The effect of this publishing policy is that the Residential Code is contained in four books, one 3-year supplement, and seven amendment-mailings from subsequent Council meetings, for a total of twelve separate publications, at the time of the audit fieldwork.

We conducted a survey of local inspection departments, which is described in greater detail in the report section discussing the Code Officials Qualification Board, but we asked some questions related to the Code which we will discuss here.

More than half (55.4%) of the respondents reported that the Code is not clear, and almost all of them think that drawings add clarity to the Code.

- \* More than 81.0% of the respondents have problems keeping up with Code changes.
- \* More than 88.0% report that the frequency of Code changes causes problems.
- \* More than 69.0% do not receive Code amendments in a timely manner.

In addition to the problems cited in using a Residential Code contained in multiple components and increasing by one every time the Council meets, there is the inherent factor that there is no methodology for removing obsolete sections, therefore they are still there to confuse and confound those who are trying to use, as well as those who are trying to learn, the Code. The frequent changes in the Code combined with the effective-upon-ratification policy and the failure to adopt a loose-leaf format for the Residential Code make it difficult for users to stay current. They also contribute to the high volume of requests for interpretations from designers, Code officials, and other Code users.

The Council has recently adopted a model for a new comprehensive North Carolina Uniform Residential Building Code. The model is published by the Council of American Building Officials (CABO). The CABO One and Two Family Dwelling Code is an all-trades Code so the entire residential Code is contained within one book, and it is published in loose-leaf format. A committee is presently engaged in preparing the necessary state amendments and is expected to present them to the Council in December 1990.

CABO's publisher amends the Code only once a year; a policy that appears to be reasonable, and one which we recommend to the Council for its amendments.

## **CONCLUSION**

**We support the Council's action relating to a new Residential Code.**

### **Department of Insurance Responsibilities Relating to the Code**

G.S. 143-139(b) provides that the Commissioner of Insurance is responsible for Code administration and enforcement. Part of this function is assigned to the Engineering Division - Code Consultant Section, which has a professional staff of engineers and architects.

The code consultants have two primary duties; one is plan review and the other is Code interpretation. The Code requires designers to submit the plans and specifications for buildings which meet certain criteria to the Department of Insurance for confirmation of Code compliance. The code consultants review plans and specifications submitted to them for approval for the buildings described below.

<u>Occupancy Group</u>	<u>Building Plans to be Approved</u>
Residential	Over 4 stories or over 100 rooms
Business	Over 4 stories or over 50,000 ft.
Industrial	Over 4 stories or over 50,000 ft.
Mercantile	Over 4 stories or over 50,000 ft.
Educational	All buildings (over 200 people for non-public owned)
Institutional	All buildings
Assembly	Over 200 people
Government	Most Buildings

Source: North Carolina State Building Code.

Management estimates that five consultants use approximately 100 hours per week reviewing plans and specifications for Code compliance.

The Section's records show that, in addition to written requests and requests from visitors for Code interpretations, the Code consultants receive approximately 1,600 telephone calls per month asking for Code interpretations. Management estimates that about 5% of the requests relate to conflicting interpretations between inspectors and builders, 20% from inspectors asking for interpretations, and the remaining 75% from designers asking if a design being considered would comply with the Code. The need for excessive interpretations is probably a logical consequence of a Code in a constant state of flux, but management stated that the engineers were doing critical design for many of the designers.

The telephone consultations between the consultants and designers are informal and do not replace plan review, but the design community receives an obvious benefit from the staff's ready accessibility and from its knowledge of the Code. The consultations and interpretations are provided at no cost to the designers although they receive a substantial economic benefit from the State.

It is common practice in other states to charge a fee for plan review services, and, in our opinion, the designers should pay a fee for the plan review service provided by the Code consultants.

The Southern Building Code Congress International, Inc. (SBCCI), an organization of twenty-five southern states, provides plan review service to its members. SBCCI's current fee schedule reflects an hourly rate of \$65.00, for a limited review. More extensive reviews are priced as shown.

<u>Total Building Valuation</u>	<u>Fee</u>
\$0 to \$500,000	\$800.00
\$500,001 to 5,000,000	\$800.00 plus .60/\$1,000 for each \$1,000 in excess of \$500,000
\$5,000,001 and more	\$3,500.00 plus .50/\$1,000 for each \$1,000 in excess of \$5,000,000

The Code-compliance review required by North Carolina is less extensive than that provided by SBCCI and therefore takes less time, although it requires the same level of expertise. An hourly rate would provide an equitable fee arrangement, and when the rate is computed, the telephone time attributable to designers should be included.

#### RECOMMENDATIONS

We recommend that the designers pay a fee for plan review services. We further recommend that the rate be set by the Department of Insurance and that it be commensurate with the services rendered. Based on our analysis, we believe the department could generate approximately \$250,000 per year.

Present policy does not require the consultants to review plans for single-family homes. While some single-family homes are built without formal plans, most are built from stock plans purchased from building supply dealers.

We recommend that management review its position and determine if:

1. Stock plans for single family homes should be reviewed by the Code consultants for a fee.
2. Criteria should be established to identify other plans for single-family homes that should be reviewed.
3. Code consultants should teach a course for inspectors to enhance their plan review skills for those plans that are not reviewed by the consultants.

#### Department of Insurance's Response:

See page 44 for the Department of Insurance's response to the recommendations.

## CODE OFFICIALS QUALIFICATION BOARD

The North Carolina Code Officials Qualification Board's (Qualification Board) establishment and responsibility are codified in G.S. 143-151.8. et. seq. Twenty members are drawn from appointed and elected local government officials, design professionals, licensed contractors from the various building trades, academia, the Department of Insurance, and the general public. The full Qualification Board meets quarterly in Raleigh.

The Qualification Board:

- (a) Sets the employment standards for Code enforcement officials.
- (b) Certifies that the officials meet those standards.
- (c) Provides (in cooperation with the Department of Community Colleges) the courses for training the officials.
- (d) Certifies the instructors who teach the courses.
- (e) Administers the disciplinary process as necessary.

The Qualification Board is staffed by the Department of Insurance, Engineering Division. There are two engineering, two educational, and one support position for a total staff of five.

The General Statutes authorize local governments to provide building inspection services, but require that only state-certified inspectors be employed. The local government inspection jurisdictions (Jurisdictions) include counties and some, all, or none of the municipalities, or individual municipalities that range in population from a few hundred to that of the largest city. The statutes authorize three kinds of certificates: limited, probationary, and standard.

A "limited" certificate entitles an inspector to continue in the same position held for the same Jurisdiction on the applicable date. The inspector cannot change to a different Jurisdiction nor change positions with his existing Jurisdiction. The limited certificate-holder was also required to complete in-service training as determined by the Qualification Board within two years of dates established by statute. The dates were staggered, based on the Jurisdiction's population, and covered the period from 1979 to 1985, with the training to be complete by the end of 1987. The required training to maintain limited status did not automatically qualify the inspector for a standard certificate, but validated the limited certificate in perpetuity.

A "probationary" certificate allows a newly appointed or newly promoted inspector to hold a position for a specified period while qualifying for a standard certificate. For example, an inspector with a Standard Building I certificate could use a Probationary Building II certificate to get the experience required for a Standard Building II certificate. A probationary certificate is issued for two years only and cannot be renewed.

A "standard" certificate allows an inspector to hold a position as a particular type of inspector with a given level of competency for any state or local governmental unit.

The standard certificates are intended to be the basic type in force throughout the State. Under the Qualification Board's Administrative Procedures, standards have been established for positions in five fields: Code Administrator, Building Inspector, Plumbing Inspector, Mechanical Inspector, and Electrical Inspector. Three levels of competency have been established for each field except Code Administrator. Level I is for officials competent to inspect one- and two-family homes and other small buildings, Level III is for officials qualified to inspect any building or installation, and Level II falls between the two extremes. The authorization for each level is shown in the following schedule.

<u>OCCUPANCY</u>	<u>LEVEL I</u>	<u>LEVEL II</u>
Assembly	1 story @ 7,500 sf	1 story @ 20,000 sf
Business	1 story @ 20,000 sf	1 story @ 60,000 sf 4 stories @ 20,000 sf per floor
Education	1 story @ 7,500 sf	2 stories @ 20,000 sf
Hazardous	1 story 3,000 sf	2 stories @ 20,000 sf per floor
Industrial	1 story @ 20,000 sf	1 story @ 60,000 sf per floor 4 stories @ 20,000 sf per floor
Institutional	1 story @ 7,500 sf	3 stories @ 10,000 sf per floor
Mercantile	1 story @ 20,000 sf	1 story @ 60,000 sf per floor 4 stories @ 20,000 sf per floor
Residential	1 & 2 family dwellings 1 story residential @ 7,500 sf	3 stories
Storage	1 story @ 20,000 sf	1 story @ 60,000 sf per floor 4 stories @ 20,000 sf per floor

Level III Code officials are authorized to inspect all buildings.

Source: General Statutes and Rules of the Board Pertaining to Code Enforcement Officials, Published by North Carolina Code Officials Qualification Board and North Carolina Department of Insurance

Since the certification program's inception, in excess of 3,000 persons have successfully completed the certification requirements. At the present time, there are approximately 1,500 Code officials. Many of them are certified in more than one area, and they collectively account for more than 2,500 certifications.

The Building Code Council has established a minimum of ten inspections per building. Four of the ten are "building" inspections:

- |             |                |
|-------------|----------------|
| (1) Footing | (3) Insulation |
| (2) Framing | (4) Final      |

The remaining six inspections are:

- |                         |                      |
|-------------------------|----------------------|
| (5) Electrical rough-in | (8) Electrical final |
| (6) Mechanical rough-in | (9) Mechanical final |
| (7) Plumbing rough-in   | (10) Plumbing final  |

Jurisdictions are required to perform the mandatory minimum inspections, but they also have statutory authority to perform as many inspections as they deem necessary. Some of the Jurisdictions have increased the number of routine inspections performed, and all of them have to repeat inspections to confirm that identified Code violations have been corrected.

### **Statutory Compliance**

Based on our review of the applicable statutes and an examination of the Qualification Board's activities, we found the Qualification Board in compliance with the General Statutes. However, during our audit we identified areas where improvement in the regulatory system and program management could be achieved.

### **Consumers' Complaints**

Responsibility for the Code enforcement program is shared by local and state government. Local governments have administrative responsibility for the inspection program, but the Qualification Board is statutorily empowered to discipline the inspectors. G.S. 143-151.17(b) authorizes the Qualification Board to investigate the actions of inspectors upon receipt of a written, verified complaint, and it may deny, revoke, or suspend any certificate for the reasons set out in G.S. 143-151.17.

It is Qualification Board policy to limit the investigation to the allegations. The first facet of the investigation is to determine if the alleged Code violations are factual, and the second is to determine if the inspector should have found them. The standard procedure upon receipt of a complaint is for a staff engineer and a Code consultant, also an engineer, to perform an investigation to determine if the alleged Code violations constitute "basis-in-fact."

Basis-in-fact is necessary to support a charge against an inspector, and it is defined as either at least one major Code violation, for example, a structural problem, or an accumulation of minor violations, such as failure to caulk windows and similar deficiencies. If basis-in-fact is established, then a determination is made as to whether the circumstances were such that the inspector should have found the Code violations. At the conclusion of the investigation, the Code consultant sends a written report to the staff engineer identifying any Code violations.

The staff presents the findings at the next meeting of the Qualification Board which rules to grant or deny the hearing request. As a general rule, when the staff finds no basis-in-fact, the request is denied; however, if the complainant requests a hearing after notification of the findings, it is Qualification Board policy to honor the request, as required by the General Statutes.

As currently constructed, the Engineering Division Director serves as chairman of the Qualifications Board. Since the Division staff has responsibility for certifying code officials, investigating complaints, and testifying at disciplinary hearings, a perceived conflict of interest may exist as a result of the Director's dual role as division head and presiding officer at disciplinary hearings.

### RECOMMENDATION

**In our opinion, the Division Director has worked to avoid any potential conflicts. However, the current structure provides the opportunity for questions to arise concerning disciplinary procedure. Accordingly, we recommend that the presiding officer for disciplinary hearings be a member other than the division director.**

Code Officials Qualification Board's Response:

*See page 44 for the Code Officials Qualification Board's response to the recommendations.*

Management stated that most complaints relate to residential construction and are filed by homeowners against inspectors. The Qualification Board's records show that the volume of complaints received since inception by year of filing is:

<u>Year Filed</u>	<u>Total Number of Complaints</u>
1982	1
1983	1
1984	4
1985	4
1986	3
1987	5
1988	10
<u>1989</u>	<u>77</u>
Total	105

We selected a random sample of closed-complaint cases for analysis. The representative sample was drawn from cases resolved in 1989 and 1990 that had been investigated by staff and ruled on by the Qualification Board. The sample comprised fifteen cases filed from eleven jurisdictions.

We analyzed the case files to determine the nature and substance of each complaint, the extent and results of the staff's investigation, the staff's recommendation to the Qualification Board, and the final action of the Qualification Board.

We concur with the staff's finding that four (26.7%) of the complaints were invalid because the Qualification Board did not have authority, and that the remaining eleven (73.7%) cases were valid. The eleven valid cases were filed from nine different jurisdictions.

The staff investigations confirmed Code violations in all the valid cases, basis-in-fact in six (54.5%), and no basis-in-fact in the other five (45.5%) cases.

We found that one inspection department, after being informed of the investigators' findings, interceded with the builders on behalf of the complainants. The builders corrected the problems, and two (18.1%) of the complaints were withdrawn.

Upon receiving the staff's report, the Qualification Board ruled to hear four cases and denied hearings to the five remaining complainants.

One of the complainants who was denied a hearing appealed the denial as provided in the General Statutes, and the Qualification Board reversed its ruling and heard the case. The staff had found there was no basis-in-fact; the Qualification Board found basis-in-fact. The Qualification Board issued a letter of reprimand, required the Code official to repeat a specific training course, and dismissed the charges.

The full Code Officials Qualification Board convenes for disciplinary hearings. The decisions rendered in the four remaining cases were:

Charges dismissed	2	50.0%
Charges dismissed/letter of reprimand	1	25.0
Certificate revoked	1	<u>25.0</u>
<u>Totals</u>	<u>4</u>	<u>100.0%</u>

The Code violations relating to those four cases, by type, were:

Structural	45	61.6%
Other building	14	19.2
Electrical	11	15.1
Mechanical	<u>3</u>	<u>4.1</u>
<u>Totals</u>	<u>73</u>	<u>100.0%</u>

### CONCLUSION

Based on our evaluation of the complaint process, we found that the Qualification Board has managed the process in a manner consistent with the statutory authority.

#### Number of Mandatory Inspections

The North Carolina Uniform Building Code is a minimum code with public safety as its primary purpose yet the majority of the Code violations in our sample were violations of structural requirements. We recognize that Code enforcement is a quality control program, and is not intended to be a guarantee, but there were some serious problems that could have been averted. For example, there may not be enough mandatory inspections.

The Code requires four inspections of the general building. The first is the footing. After the trench is cut, it is inspected to verify that it is in compliance with the Code for the kind of soil and the specific materials to be used.

The second building inspection is the framing inspection. After the footing, foundation wall, piers, sills, floor joists, sub-flooring, studs, plates, ceiling joists, and rafters are in place, the inspector examines the foundation and the entire superstructure of the building for Code compliance. Among other things, he must determine:

- 1) That the piers and foundation wall are in compliance.
- 2) That the loadbearing members are properly centered on the piers and properly placed on the walls.
- 3) That the members are graded, sized, and spanned in compliance with the Code.

This part of the framing inspection is vital, but it is done under extreme conditions. Since the sub-floor is in place, the inspector has to crawl around under the house in the dark using a flashlight to examine what is probably the most important part of the structure. In addition to any other difficulties he may encounter, the bottom of the sills do not have to be, and may not be, more than 12" above the ground. In our opinion, when Code violations exist in the house's foundation, the probability of detecting and correcting them timely would be substantially enhanced by improving the conditions under which they are inspected. Visibility would be much better if the under-girding were inspected before the sub-floor is down. Some inspection departments currently require this type of inspection.

Another component in the process of avoiding Code violations came to our attention. The contractors are required to call for each mandatory inspection as the construction progresses and the building is ready, and almost all inspection departments are committed to making the inspection on the same day that the call is received; this policy appears to be functioning to mutual satisfaction. However, there is no provision for mandatory special inspections when building practices differ from the conventional. For example, the Code provides that pre-fabricated fireplaces and chimneys are acceptable if they are installed according to the manufacturer's directions. Installation practices are such that a separate inspection may be necessary.

The third building inspection is for insulation and is supposed to be done after the wall insulation is in place and before the sheetrock is hung. Some Jurisdictions combine the insulation and framing inspections.

## **RECOMMENDATIONS**

**We believe there is a need to modify the inspection requirements. For example, we recommend that the Building Code Council consider adding a mandatory foundation inspection to be performed after the foundation components are in place.**

**We recommend that the policy be expanded to require the contractor to call for any special inspections that would have to be made to assure Code compliance.**

We also recommend that the Council establish a policy to assure that the framing and insulation inspections are performed at appropriate times.

### CURRENT STATUS

As its September 1990 meeting, the Council amended the Code to require a separate foundation inspection. We commend the Council for this action, and we believe it will strengthen the program.

#### Building Code Council's Response:

*See page 42 for the Building Code Council's response to the recommendations.*

#### Inspection Department Survey

The General Statutes provide for a division of responsibility for regulating the construction of buildings and structures in the State. The State manages the Code and certification programs, and local government manages the enforcement program.

We conducted a survey of the Jurisdictions. A survey document was mailed to all Jurisdictions identified by Qualification Board staff. The response rate was 68.0%. We found substantial agreement on most issues.

A majority of the Jurisdictions reported that most Code violations are found in the structural category, and the next most frequent violation is in the electrical category. Ranking the categories from the highest number of Code violations to the lowest, the categories and ranking were:

<u>AREA</u>	<u>Percent</u>
Structural	54.7%
Electrical	21.4
Plumbing	12.9
Footing	5.7
Mechanical	4.3
<u>Totals</u>	<u>100.0%</u>

A large majority reported that they receive fewer than five complaints from homeowners per month, on average. They also reported that approximately three out of four homeowners' complaints are about workmanship, and the fourth one is about a Code violation. Approximately 60% of the homeowners' complaints are in the footing and framing areas, approximately 20% in electrical, and plumbing and mechanical combined account for the other 20%.

Twenty-two Jurisdictions reported that they have local ordinances which provide that new permits cannot be issued to a builder who has outstanding Code violations. Most of the remaining Jurisdictions want a General Statute with that provision.

We asked the respondents to rank the Code officials training program and gave them three options.

Excellent	16.3%
Good	49.7
Needs Improvement	<u>34.0</u>
<u>Total</u>	<u>100.0%</u>

A large majority of the respondents think:

- \* The training and experience requirements for each level of certification are adequate.
- \* They receive adequate support from the state agency staff.
- \* Their inspection departments would be stronger if inspectors were given some on-the-job training working with another inspector before they are allowed to perform inspections alone.
- \* Their departments would be stronger if continuing education was mandatory.

However, a large majority also reported that they think the Qualification Board should:

- \* Expand the time allowed to teach classes.
- \* Provide continuing education and make it mandatory.
- \* Include some field training in the program and teach how to do an inspection.
- \* Provide more schools and disperse them more equitably throughout the State.
- \* Provide a review class for successful candidates who pass with less than a perfect score.
- \* Use more visual aids and videos in the classes.
- \* Provide teaching/learning videos for home study.

A large majority reported that they do not have a Quality Control program.

### RECOMMENDATIONS

Based on our analysis of the Qualification Board and a review of the questionnaire responses, we recommend that the Qualification Board consider the following steps to strengthen the program.

Establish a continuing education program and mandate a minimum number of hours annually for certificate renewal.

Develop Code Administrator courses appropriate for the various Jurisdictions based on staffing.

**Develop Quality Control programs consistent with the needs of the inspection departments. There are Quality Control programs already in use in some Jurisdictions which range from the checklist used in the one-person department to the sophisticated systems used with larger staffs. The Engineering Division staff should provide the necessary support for the Quality Control programs.**

**A point of emphasis during assessment should be whether resources (staff, funds, supplies) available to inspection departments are adequate to fulfill the department's responsibilities.**

**Respond to the needs identified by the Jurisdictions.**

*Department of Insurance's and Code Officials Qualification Board's Response:*

*See page 45 for the Department of Insurance's and Code Officials Qualification Board's response to the recommendations.*

## REVIEW OF CONSTRUCTION LICENSING BOARDS

The General Assembly enacted legislation in 1925 to establish a regulatory agency over the construction industry in the State to protect the public. Chapter 87 of the General Statutes has become a "melting pot" of laws regulating the construction industry. Licensing boards were established to regulate certain construction specialties and to oversee the provisions for establishing competency through examination and licensing and to administer the appropriate disciplinary action. Each board operates under a different set of rules, with diverse authority for types of disciplinary actions, fees, and methods of operation. Interpretation of legislative intent is also diverse among the boards.

In performing our audit, we have examined issues relating to new home construction by reviewing each of the appropriate regulatory agencies and those functions for which no regulation is provided by statute.

We examined records and performed testwork at the following licensing boards: Architects, Electrical Contractors, Engineers and Land Surveyors, General Contractors, Landscape Architects, Landscape Contractors, and Plumbing and Heating Contractors. We looked at the organization and staffing, fund management, methods used in examination and discipline, and other statutory responsibilities.

We examined complaints received by the Attorney General's Consumer Protection Division as they relate to new home construction. We interviewed management and staff at the Groundwater Section of the Environmental Management Commission. We obtained information from other states on the regulation of home construction.

Architects, Engineers, and Land Surveyors are professionals who have limited involvement in residential housing. Our fieldwork showed that the Board of Architects has very little influence over residential building in that home designers provide many of the plans for new homes. Land surveyors usually are involved in land transfers. Landscape architects are not hired for residential projects; they are involved more in planning the grading, drainage, and aesthetics of shopping malls, office complexes, and municipal and state public areas. We have limited our major discussions to those contractors whom we consider to be integral principals in the construction industry.

### Statutory Compliance

We found that the North Carolina construction licensing boards are basically in compliance with the statutory provisions regarding their licensing and disciplinary functions. However, during the audit we identified areas where improvement in the regulatory system and program management could be achieved. These changes are necessary to assure that the regulatory system meets the statutory intent of protecting the "public health, safety and welfare."

## State Licensing Board For General Contractors

The State Licensing Board for General Contractors (General Contractors Licensing Board or GCLB) has the primary responsibility for the regulation of contractors involved in the construction of buildings, residences, highways, and public utilities.

Staff of the GCLB consists of a Secretary-Treasurer, an investigator, two examination specialists, and support personnel.

There are three classifications of general contractors: Limited (project value \$250,000 or less); Intermediate (project value \$500,000 or less) and Unlimited (project value over \$500,000). Those applying for the Limited examination must show that their assets exceed their liabilities by at least \$12,500. Applicants for the Intermediate or Unlimited examination must provide an audited financial statement prepared by a CPA, or by a qualified independent accountant in the practice of public accountancy, as proof of their financial ability to complete various projects in the appropriate amounts. Applicants must also furnish proof of character, competency and ability, integrity, and must not have been convicted of acts involving dishonesty, fraud, and deceit.

The GCLB has the statutory authority to discipline licensed contractors by suspending or revoking licenses, by issuing reprimands, and by imposing probations. The GCLB can also file injunctions through superior court against unlicensed contractors and may deny the license of an applicant that GCLB considers unsuitable. In addition, G.S. 87-13 sets out allowable actions for certain misdemeanor offenses such as unauthorized practice of contracting, false impersonation, use of expired or revoked licenses, bidders who are not in compliance with the statutes, and the improper use of a certificate. Punishment for the misdemeanor offense is a fine of not less than \$500 and three months in prison, or both, at the discretion of the court. The statutes allow GCLB funds to be used to prosecute the violations, although we could not determine that this provision had ever been used.

We examined statistical information and found that the GCLB tested 2935 applicants in 1989; 1527 were tested for residential building licenses. Of those tested, 1686 were licensed--854 as residential builders. Examinations are given in two locations four times a year.

The examination includes open book questions on the Building Code. The examinees are also tested on blueprint analysis, OSHA regulations, technical questions, business knowledge, and questions regarding the licensing laws. Examinations may be given in the Board's offices to those who may be qualifying as a designated replacement licensee for a business or for those who are classified as illiterate.

The GCLB also licenses specialty contractors in railroad construction, swimming pool installation, and roofing construction; however, only 1% are licensed in the specialty areas because the threshold is so high (\$45,000) for licensure that only a large commercial project would qualify for a license in specialty construction.

No license is required for a contractor who builds a structure or performs construction work costing less than \$45,000.

Currently, there are approximately 14,000 licensed general contractors.

## Complaints filed with the General Contractors Licensing Board

We found in our testwork on complaints filed with the General Contractors Board:

The 560 complaints received directly by the GCLB during the five year period ending June, 1990 were processed as follows:

- \* 120 (21%) were resolved. GCLB management stated resolution was an unlicensed contractor agreeing not to practice, a licensed contractor taking corrective action to cure a deficiency, or the complainant dropping the charge.
- \* 214 (39%) were investigated and were not referred to the Review Committee. G.S. 87-11 states that formal charges, unless dismissed without hearing by the Board as unfounded and trivial, shall be heard and determined by the GCLB. We found that some cases were dropped because of the GCLB's strict interpretation of the complaint filing requirements, although there was reason to believe that a violation of the licensing statutes had occurred. Others which are not sent to the Review Committee include random complaints on unauthorized practice by non-licensees and licensees bidding or contracting over their lawful limits. In our opinion, the GCLB has not developed clear guidelines for the staff to use in assessing cases. We question whether this practice assures that the Board considers all appropriate cases filed.
- \* 226 (40%) which were considered by the Review Committee were acted on as follows:
  - 52 injunctions filed for unauthorized practice
  - 58 in which the contractor took remedial action or the charge was withdrawn
  - 79 in which no probable cause for a disciplinary hearing was found
  - 3 which required more investigation
  - 34 sent to disciplinary hearing (20 of the hearings have been conducted; 14 are pending)

The GCLB has not developed procedures for follow-up on Review Committee decisions to assure that the contractors take appropriate corrective actions.

For the hearings conducted, the following actions were taken:

Revocation	4
Suspension	12
Probation	6
Consent Order	3
No Violations of GS 87-11	2
	—
Total	<u>27</u> (Note A)

Note A: Actual number of actions exceeds number of hearings due to multiple actions against a licensee. In certain cases, the board stays the suspension on condition that the licensee takes certain corrective actions.

When cases are received, the staff, in consultation with legal counsel, will determine what actions are appropriate. If the case warrants, the investigator will evaluate the facts to determine if the Review Committee should consider the complaint. In some instances, the investigator may rely on the local inspection department to review the structural problems identified in the complaint. In our opinion, this practice presents a potential conflict of interest for the inspection department which consults with the investigator on homes the department has inspected.

### RECOMMENDATIONS

We recommend that the GCLB establish clear guidelines for the staff to use when considering whether a case should be presented to the Review Committee.

We recommend that the General Contractors Licensing Board establish an investigator position that requires a technical background in the construction industry to assure that the Board can conduct independent investigations.

We also recommend that the GCLB establish clear guidelines for following up on decisions by the Review Committee.

#### GCLB's Response:

*See page 47 for the GCLB's response to the recommendations.*

#### Role of the Review Committee in Managing Complaints

The GCLB established a Review Committee to perform a preliminary review of cases. Cases which are sent to the Review Committee by the staff investigator are considered at the monthly meetings held in Raleigh. The Chairman of the Review Committee is a Board member; the other two members are the Board's attorney and Secretary-Treasurer.

The same Board member has been the only appointed contractor hearing the review cases for at least a year. In our opinion, utilizing a review committee, as currently structured, delegates too much responsibility to the GCLB's attorney and the Secretary-Treasurer in the critical area of reviewing complaints. The GCLB staff should not be placed in a position to be decision-makers regarding disciplinary actions.

While the GCLB is within its authority to utilize a Review Committee, the effect of the decision is to assign a major responsibility of the GCLB to a committee composed primarily of staff.

## RECOMMENDATIONS

We recommend that the GCLB reconsider the practice of utilizing staff on the review committee. In our opinion, a review committee with two or three board members would assure greater input by the Board into the evaluation process.

We believe it is important to remove the staff from the decision-making role at this stage of the process.

### GCLB's Response:

*See page 47 for the GCLB's response to the recommendations.*

### Time Delays in Processing Cases.

Complaints processed to Disciplinary Hearing during the period July 1, 1987 to June 30, 1990 took an average of 10 months each, with two months being the minimum and 21 months being the maximum time to process.

Our testwork showed that a backlog of disciplinary cases has accumulated because the Disciplinary Hearing Committee (the entire Board less the Review Officer) only acts on one case per month. The same case may be carried over from month to month; other cases wait in line until disposition of the case in front of it. The GCLB hears only one case at each monthly meeting. During the five year period set out above, only 18 cases were actually heard, which amounts to 3.6 cases a year. During the time of our audit, approximately 17 cases were in backlog.

## RECOMMENDATION

We recommend that the GCLB establish a calendar that will allow it to dispose of cases in a more timely manner. If the GCLB finds that it is unable to manage the cases in a timely manner, the GCLB should consider utilizing the Office of Administrative Hearings to handle the cases. All parties involved deserve more timely management of cases.

### CURRENT STATUS

During the course of the audit the GCLB has taken steps to refer cases to the Office of Administrative Hearings. We commend the GCLB's actions and encourage the GCLB to continue to monitor the processing of cases to assure timely management.

### GCLB's Response:

*See page 47 for the GCLB's response to the recommendation.*

## Management of Cases referred from the Attorney General's Office

We sampled the cases referred to the General Contractors Licensing Board by the Consumer Protection Division of the Attorney General's Office to determine how the Board processed the referrals. We found that the referrals were not placed in the contractors files, nor was any record made of the referral. No action was taken and the investigator disposed of the referral document. The GCLB's interpretation of the statutes is that a sworn written complaint must be received before they act on it. A few of the complaints we tested at the Attorney General's Office were seen in the GCLB's contractor case files, but only because the complainants contacted the Board directly.

In our opinion, failure to establish an appropriate record keeping system for referrals has limited the information available to the Board that might be useful in regulating the construction industry. While all referrals may not be applicable to the Board's activities, we believe the information provided by the Attorney General's Office should be carefully evaluated and maintained for future reference.

The GCLB's standard practice is to disregard referrals; however, we found that they do act on reports from inspectors regarding unlicensed contractors. In our opinion, the Board should treat referrals from the Consumer Protection Division and from other state and municipal agencies in a consistent and uniform manner to assure that all information receives sufficient consideration.

### RECOMMENDATION

We recommend that the GCLB reconsider its handling of referrals received from the Consumer Protection Division of the Attorney General's Office. In our opinion, procedures should be established to conduct a preliminary investigation to determine if action is warranted without a sworn written complaint.

#### GCLB's Response:

*See page 47 for the GCLB's response to the recommendation.*

## Referral of Complaints to Appropriate Boards

The GCLB has not established formal procedures for referring complaints to other boards. The current practice relies primarily on verbal communication between the GCLB and other boards. Consequently, the files do not uniformly document action by the GCLB when complaints relate to other boards.

### RECOMMENDATION

We recommend that the General Contractors Licensing Board review its procedures on referrals to assure appropriate action is taken and adequate documentation is maintained in GCLB's files.

#### GCLB's Response:

*See page 47 for the GCLB's response to the recommendation.*

## **Establishment of Financial Responsibility**

Under current GCLB rules, applicants for the intermediate or unlimited license, or a change in license limitation, must provide an audited financial statement prepared by a certified public accountant or a qualified independent accountant who is engaged in the public practice of accountancy. However, during the renewal process contractors are not required to submit an audited financial statement. The GCLB does have the authority to require a license holder to submit an audited financial statement if the circumstances warrant.

The GCLB currently has proposed rule changes relating to financial responsibility. One rule change would allow the GCLB to require an applicant for a limited license to submit an audited financial statement prepared by a certified public accountant. The other rule change relating to an audited financial statement requires all audits to be conducted by certified public accountants. We question the exclusion of qualified independent accountants from the audit process. Chapter 93 of the North Carolina General Statutes recognizes various types of independent accountants. In our opinion, a qualified independent accountant should be authorized under the GCLB rules to provide auditing services.

In our opinion, the GCLB should consider whether a requirement for an audited financial statement on a periodic basis would provide greater protection to consumers. In addition, an audited financial statement for all license levels would assure more independent and objective data concerning the financial responsibility of a licensee.

## **RECOMMENDATION**

We recommend that the GCLB review all rules relating to the financial responsibility of licensees to assure that independent and objective financial information is supplied at appropriate times during the licensing and renewal process.

### *GCLB's Response:*

*See page 50 for the GCLB's response to the recommendation.*

## **CONCLUSION**

While the General Contractors Licensing Board is in compliance with the General Statutes, we question whether the level of effort exerted by the GCLB and the staff is consistent with what is required to adequately protect the public from incompetent or negligent contractors. Strict compliance with the General Statutes does not relieve the GCLB from its obligation to establish effective enforcement programs to regulate the industry. In our opinion, the GCLB should reassess all operating policies and procedures to assure that they are appropriately comprehensive to deal with problem contractors. Once new policies and procedures are adopted, it is incumbent on the GCLB to aggressively enforce the regulations.

## **State Board of Examiners of Electrical Contractors**

The State Board of Examiners of Electrical Contractors regulates the electrical licensees in North Carolina. The Board is made up of seven members, 5 appointed by the Governor, 1 appointed by the Commissioner of Insurance, and 1 appointed by the North Carolina Association of Electrical Contractors. There are ten (10) full time employees and as many as four part-time temporaries--three of whom are field representatives or investigators located in different geographical areas.

The Board has several functioning committees including an Applications Committee, a Rules Committee, an Examination Committee, and a Finance Committee.

The Electrical Contractors Board administers examinations twice a year at three sites. In FY 88-89, 2857 contractors were examined; 1123 passed (39%). There are ten categories of examinees--limited, intermediate, unlimited, and single family detached residential, and elevators, plumbing and heating, well water pumps, electric signs, low voltage, and swimming pools. All classifications require experience of five, four, and two years, as determined by classification, before an applicant is eligible for a qualifying examination. The examination includes provisions of the National Electrical Code as incorporated in the State Building Code.

Licenses are required for any dollar amount of electrical work. In 1989, there were approximately 11,000 licensees. There is also a continuing education requirement beginning in 1991. Financial requirements for a license include the ability to be bonded at \$17,500 for intermediate and \$75,000 for unlimited classifications. No bonding ability is required for limited licenses. The form used for bonding ability is submitted by a bonding company; however a letter of credit from a financial institution may be acceptable. The financial requirements are necessary at initial application and not for renewals on the particular business entity.

A licensee is a person, partnership, firm or corporation that regularly employs at least one listed qualified individual and which has been issued a license by the Board. A listed qualified individual does not have to be on a specific project site, but does have the specific duty and authority to supervise and direct electrical contracting done by the licensee on whose license said qualified individual is listed.

## **Complaints Filed With the State Board of Examiners of Electrical Contractors**

Complaints are received from inspectors, consumers, the Attorney General's Office, and others. All complaints, including referrals, are acted on. There were 169 complaints in 1989 in both commercial and residential contracting. Complaints are assigned to the Board's three investigators (who are former electrical licensees). If the complaint is valid, the Board tries to mediate to have the deficiencies corrected. If there are two valid complaints against the same licensee in one year, or three valid complaints during any period of time, the licensees' file is reviewed by the Board's Disciplinary Review Committee for a preliminary determination of the new charges and to make a recommendation for action by the full Board. The Committee may recommend four different actions: (1) dismissal due to unfounded, frivolous, or trivial complaints; (2) a letter of caution to the licensee; (3) upon licensee's admission of guilt, a letter of reprimand; or (4) the case can be presented to the Board of Administrative Hearings.

The Review Committee (two members of the full Board), meets six to eight times a year. The Review officers do not participate in the Administrative Hearings. The investigator prepares an information packet on each case and presents it to the Committee for its consideration.

Disciplinary actions included one probation, three revocations, three reprimands, three court actions, and four administrative hearings. The Board issues injunctions against unlicensed contractors. The statutes were recently amended to allow the Board to compromise the discipline in return for a penalty of up to \$1,000 to be deposited in the State's general fund, (which has not been used). The statutes also allow the Board to take an unlicensed contractor to court.

We traced a sample of complaints from receipt to disposition and found that the complaints are handled timely and efficiently. In 1989, the Board received 169 complaints which were administered:

Warnings	110
Cases without merit	38
Cases pending	7
Administrative hearings	4
Court actions	3
Reprimands	3
Revocations	3
Probation	<u>1</u>
Total	<u>169</u>

Approximately 50% of the complaints were against unlicensed contractors. Injunctions were filed against the unlicensed contractors.

### CONCLUSION

We believe the State Board of Examiners of Electrical Contractors is managing its regulatory responsibilities in an effective manner.

## State Board of Examiners of Plumbing and Heating Contractors

The Plumbing and Heating Board is made up of seven members appointed by the Governor. There are eight full time employees, including three investigators located in the geographic areas which they serve.

The Board tested 3292 applicants in 1989. Their passing rate is 34%. Two annual exams are administered. There is a continuing education requirement beginning in 1990. In 1989, there were approximately 9000 active licensees.

The Chairman appoints a Review Trial Officer to determine whether complaints are to be heard by the Disciplinary Board. The Board meets every month to hear cases unless the number of complaints warrants additional meetings.

### Complaints Filed With the State Board of Examiners of Plumbing and Heating Contractors

In 1989, the Board received 475 complaints which were administered as follows:

Injunction Pending	7
Complaints Pending	273
Hearing Pending	15
Not Under Board's Jurisdiction	11
No cause for action	65
Reprimand-licensee	5
Warning--unlicensed	37
Consent Agreements	14
Injunctions	6
Contempt of Injunction	2
Hearings held	28
Revocations	1
Suspensions	6
Probation	<u>5</u>
	<u>475</u>

The results of hearings are published in the Board's newsletter.

Approximately 50% of the complaints are on unlicensed contractors. The statutes allow the Board to process a misdemeanor warrant through the courts. Upon conviction the court can impose a fine of not less than \$100 or imprisonment for not more than three months, or both.

Cases which reach the Disciplinary Board are those which have not been settled previously.

Installation of space heaters and floor furnaces are not regulated by the Board. No license is required.

During the course of our evaluation, we identified deficiencies in the recordkeeping system that hindered our evaluation of the boards activities relating to complaints. In our opinion, a recordkeeping system that tracks complaints from beginning to resolution should be developed.

### RECOMMENDATION

We recommend that the Board direct the staff to develop a comprehensive recordkeeping system for tracking complaints. The system should be updated monthly following action by the Board.

*State Board of Examiners of Plumbing and Heating Contractor's Response:*

*See page 56 for the State Board of Examiners of Plumbing and Heating Contractor's response to the recommendation.*

## STRUCTURE AND MANAGEMENT OF THE HOME CONSTRUCTION REGULATORY SYSTEM

Based on our evaluation of the current regulatory system, we believe there are fundamental issues concerning the structure and management of the system that must be addressed.

### Review of Proposals to Strengthen the Regulatory System

During the audit we examined various proposals to modify and strengthen the regulatory system for home construction. Specific recommendations include:

- Modify the \$45,000 threshold for requiring a General Contractors License. (General Statute 87-14.) Various proposals have been made to lower the exemption to cover a larger percentage of home construction projects.
- Establish requirements that a person who builds on his own land must occupy the residence after completion, as opposed to immediately selling the home.
- Modify the General Statutes to allow the imposition of fines for ordinary negligence and untimely completion of contracts.
- Establish uniform regulations to preclude issuance of building permits to a contractor with outstanding code violations.
- Require performance bonds.
- Establish a recovery fund.

In our opinion, these types of recommendations establish the ground work for strengthening the regulatory system. However, with any changes of this nature, care should be taken to balance the roll of the regulatory system with the problems faced by the consumer.

#### State Board of Examiners of Electrical Contractor's Response:

*See page 53 for the State Board of Examiners of Electrical Contractor's response to the proposals.*

### Review of Regulatory Agencies in Other States

We surveyed other states to assess how their regulatory system compared with North Carolina's.

We identified states that are acting to bring the different licensing boards under one authority in order to provide consistency and more effective administration.

We found that much lower thresholds usually exist for licensees; Hawaii, for instance, licenses all who do work over \$250. Virginia has several classifications of licenses, such as Type A and Type B who perform construction valued up to \$40,000 or over \$40,000. California has a \$200 threshold. Other states we examined had established floors for licensure from \$2,000 to \$20,000. A number of states do not license contractors.

Some states have established recovery funds, financed by licensed contractors, to protect homeowners against non-performance, default or other violations of law or rules and regulations governing contractors.

Florida has a 14-man board to discipline all contractors.

Some states issue identification cards (similar to credit cards) to be used by the contractor when dealing with others.

Some states may have as many as 60 different contractors licensed, including house painters.

In our opinion, examining other state systems would provide a useful perspective for the General Assembly members as they consider needed changes to the regulatory system.

### **Critical Issues for the General Assembly's Consideration**

Based on our audit, we believe the following issues must be addressed to assure that the regulatory system is functioning properly.

#### **Statutory Revisions**

Throughout the audit we identified questions relating to statutory authority, statutory intent, and the lack of statutory authority that, in our opinion, hinders effective regulation of the industry. Various proposals have been made to the Legislative Study Committee on Consumer Issues that are designed to strengthen the regulatory process. The General Assembly should evaluate the variances in disciplinary authority granted to the boards to assure that the authority granted, as well as the implementation by the boards, is consistent with the legislative intent. The General Assembly should also carefully consider whether the existing statutes provide adequate time frames to protect the home buyer from incompetent or negligent contractors and whether the Inspection Departments have sufficient statutory authority to enforce compliance with laws and regulation and deal effectively with problem contractors.

During the audit, we identified a substantial number of complaints that were brought against unlicensed contractors. While the Boards have various authorities to respond to problems with the unlicensed contractor, valid questions have been raised concerning whether the \$45,000 threshold for a contractors license has exempted too many contractors from licensing requirements. This problem appears especially acute when home improvements are involved because the threshold is so high that a high percentage of home improvements could occur without the contractor having a license.

The General Statutes establishing the Building Code Council (Council) were enacted in 1933 and re-written in 1957. There have been substantial changes in the building industry and in Code enforcement during the ensuing thirty-three-year interim. Although a few amendments have been added, some as recent as 1989, the statutes appear to be outdated and would be improved by incorporating definitions and removing obsolete sections.

### RECOMMENDATIONS

We recommend that the General Assembly review all statutes in place to regulate the Home Construction Industry to assure that the statutes are appropriately comprehensive and provide the necessary authority to protect the health, safety, and welfare of the public.

In addition, we recommend that the General Assembly reevaluate the 1989 decision to increase the threshold for Licensing General Contractors. The lowering of the threshold would not effect individuals who build on their own property for their own use. Prior to adjusting the threshold, the General Assembly should take steps to assure that the enforcement program at the General Contractors Licensing Board is functioning effectively.

In our opinion, Article 9, Chapter 143 of the General Statutes should be re-written to provide definitions and clarity, and to remove obsolete sections.

#### Officials Responses:

*See page 45 for the Department of Insurance's and the Code Officials Qualification Board's response to the recommendations.*

*See page 47 for the General Contractors Licensing Board's response to the recommendations.*

*See page 54 for the State Board of Examiners of Electrical Examiner's response to the recommendations.*

## Creation of a Recovery Fund

When a consumer encounters problems with construction contractors, several options are available. Options include judicial remedies through the court system as well as administrative remedies through the regulatory system. However, if the contractor is insolvent, the consumer may experience a "moral victory" while still confronting significant costs to correct the problem and cover legal expenses. In our opinion, the lack of financial remedies is a problem in the current regulatory structure.

The creation of a recovery fund would represent a prudent step to assist consumers who encounter severe problems with their homes that cannot be effectively addressed through the judicial or regulatory system. The fund should only be used when a consumer has a valid claim against an insolvent contractor and after all other remedies have been exhausted, including any builder warranties.

Issues that would need to be addressed concerning the creation and management of a recovery fund include:

- How would the fund be established and administered?
- Which construction trades would participate in the fund?
- When would consumers be entitled to assistance?

Under this system, problems with unlicensed contractors would not be addressed through the recovery fund.

## RECOMMENDATION

We recommend that the General Assembly take steps to establish a recovery fund. In our opinion, the recovery fund could be established by using a percentage of the accumulated fund balances of the boards. We estimate that approximately \$450,000 could be generated to create the fund. Once established, the licensees could be assessed when necessary to maintain a predetermined minimum balance in the fund.

### Officials Responses:

*See page 51 for the General Contractors Licensing Board's response to the recommendation.*

*See page 54 for the State Board of Examiners of Electrical Contractor's response to the recommendation.*

## Structure of the Regulatory System

In North Carolina, multiple boards are involved in regulating the home construction industry. We do not believe the current regulatory system can respond effectively to the complex problems frequently encountered in the home construction industry. During the audit, we observed minimal coordination between the regulatory boards to collectively address deficiencies. In our opinion, the decentralized regulatory system results in fragmented, inconsistent management that does not provide adequate protection for the consumer.

We believe serious consideration should be given to consolidating the existing regulatory functions into a single agency. While such a move would represent a significant reorganization, the change would provide a structure for a more comprehensive and coordinated approach to regulating the industry. An additional advantage to a single agency would be the consolidation of financial resources to manage the programs. Currently, each board is incurring significant administrative cost to operate independent programs. A single agency would allow for the consolidation of certain administrative services and provide an opportunity for more efficient, effective, and uniform management of the regulatory resources. We estimate that the consolidation could reduce the cost of operating the regulatory boards by approximately \$450,000 by consolidating responsibilities, eliminating duplicate positions, and providing legal and support services in-house.

## RECOMMENDATION

We recommend that the General Assembly develop a plan for creating a single construction regulatory agency. A single agency would consolidate the regulation of all appropriate trades involved in the construction industry. The programmatic areas relating to the Building Code Council and Code Officials Qualifications Board should remain administratively attached to the Department of Insurance.

In creating a single regulatory agency, decisions relating to the appropriate organization and management of the agency would have to be carefully considered.

As with all the proposed changes outlined to improve the regulatory system, the General Assembly will need to carefully balance an appropriate level of industry regulations against the requirements to protect the health, safety, and welfare of the public.

### Officials Responses:

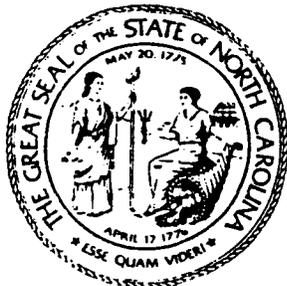
*See page 52 for the General Contractors Licensing Board's response to the recommendation.*

*See page 54 for the State Board of Examiners of Electrical Contractor's response to the recommendation.*

## SCHEDULE OF FINANCIAL IMPLICATIONS

Authorize the Department of Insurance to charge fees for reviewing plans and specifications for code compliance. Estimate of annual revenue	\$ 250,000
Consolidation of the Home Construction Regulatory System. Savings could be generated by consolidating responsibility, eliminating duplicate positions, and providing legal and support services in-house. Estimated annual savings	450,000
Creation of a recovery fund. Utilize the unrestricted fund balances of the affected boards to initiate the fund. Assessment of licensees may be necessary to establish an appropriate balance	<u>450,000</u>
Total Financial Implications	<u>\$1,150,000</u>





# BUILDING CODE COUNCIL STATE OF NORTH CAROLINA

Staffed By  
N.C. DEPARTMENT OF INSURANCE

410 N. BOYLAN AVENUE  
RALEIGH, N. C. 27603  
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Commissioner  
LEE HAUSER, P.E.  
Deputy Commissioner and  
Secretary to Council

November 8, 1990

Mr. Edward Renfrow  
State Auditor  
State of North Carolina  
Raleigh, North Carolina 27603-5903

Dear Mr. Renfrow:

I received a preliminary draft of your performance audit of the State Regulation of Home Construction Industry which was requested by the Legislative Study Committee on Consumer Issues.

As Chairman of the North Carolina Building Code Council, I have reviewed the audit and find the information in the report to be correct and thorough as it relates to the Council.

The Council will consider recommendations at its hearing in December and adopt the applicable recommendations that are mentioned in the report.

Mrs. Ruth Starnes was very courteous, thorough and knowledgeable about the subject during my interview with her in Laurinburg. She did an excellent job, and I agree with her recommendations and believe they set out a direction to protect homeowners buying and occupying residences in our State.

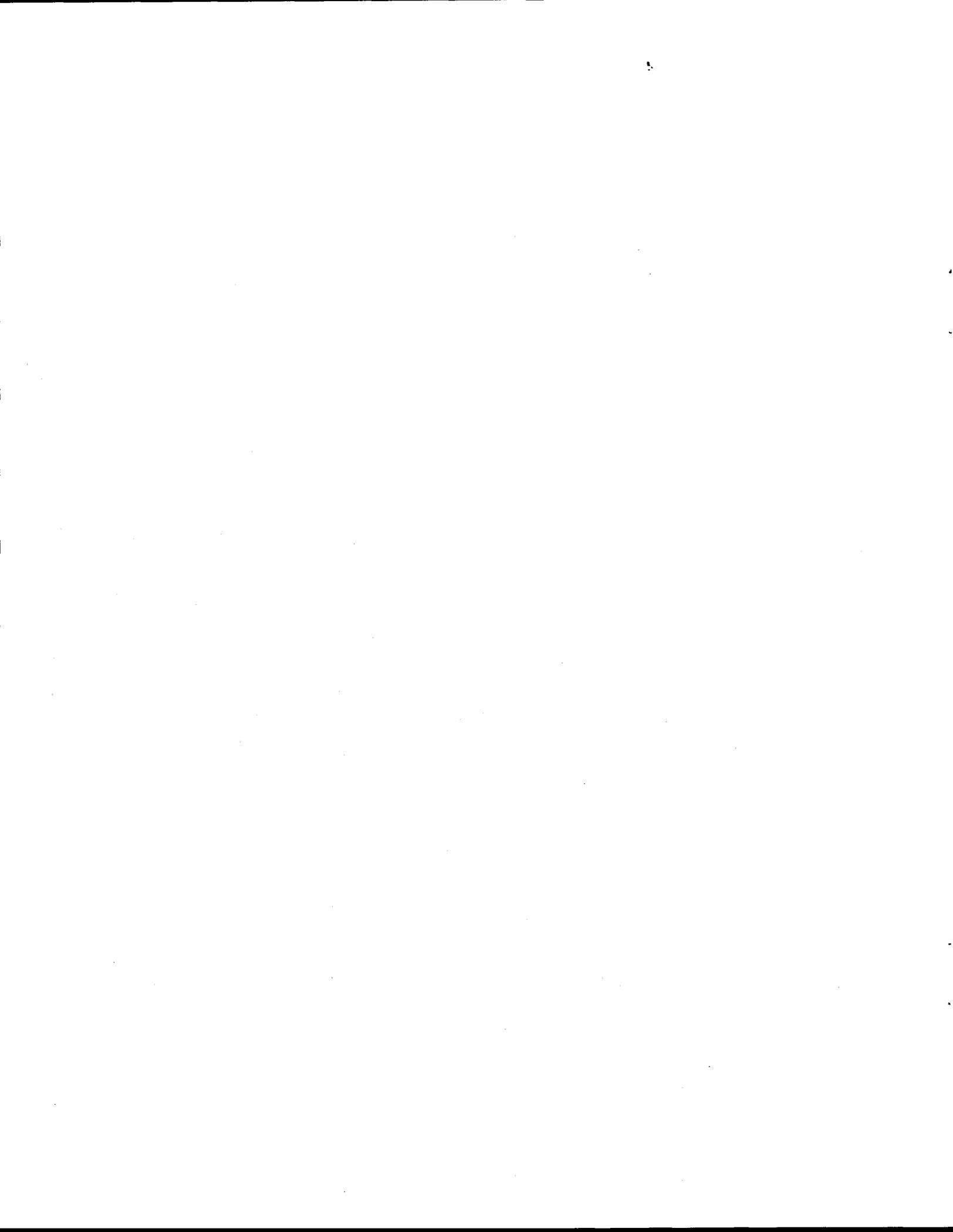
If I can be of further help, please contact me.

Yours very truly,

*Sam T. Snowden, Jr.*  
Sam T. Snowden, Jr., Chairman  
North Carolina Building Code  
Council

STS:jar

cc: Mr. Lee Hauser, P.E.





DEPARTMENT OF INSURANCE  
State of North Carolina

P O. BOX 26387

RALEIGH, N C 27611

JIM LONG  
COMMISSIONER OF INSURANCE

ENGINEERING DIVISION  
(919) 733-3901

November 2, 1990

Mr. Edward Renfrow, Office of the State Auditor  
300 North Salisbury Street  
Raleigh, North Carolina 27603-5903

Re: Performance Audit Report, Regulation of the Home Construction Industry

Dear Mr. Renfrow:

Commissioner Long has asked I respond to the recommendations of this audit pertaining specifically to the Department of Insurance. In addition, I will be responding for the North Carolina Code Officials Qualification Board.

The subject of home construction is not one of simplicity and provides plenty of opportunity for opinion. First I would like to sincerely thank Ms. Ruth Starnes and Mr. Curtis Clark of your staff for the patient and professional manner in which they handled this audit. They developed a working knowledge of the subject quickly and came to specific conclusions in a very timely manner. While we may not agree with all conclusions and recommendations of the report, we must acknowledge appreciation to your staff for their diligent efforts.

The responses to pertinent portions of the audit report are attached. Again, we wish to thank you and your staff for this opportunity to work together.

Very truly yours,

A handwritten signature in cursive script that reads "Dascheil D. Propes".  
Dascheil D. Propes  
Senior Deputy Commissioner  
Engineering Division

DDP/mrj

RESPONSES TO PERFORMANCE AUDIT REPORT  
REGULATION OF THE HOME CONSTRUCTION INDUSTRY

Recommendation for Plan Review on fee basis:

We agree with this recommendation. As a matter of fact, this approach was examined prior to this audit as a possible revenue enhancement to the State. Although it was not included in our 1989-90 expansion request, fee-basis plan review is a subject for future consideration.

Recommendation that we review our position and determine if:

1. Stock plans for single family homes should be reviewed by the Code consultants for a fee.

We do not agree with this recommendation. Stock plans have not contributed to the problem in house construction.

2. Criteria should be established to identify other plans for single family homes that should be reviewed.

We agree with this recommendation and are willing to take steps to identify as guidelines for local Code enforcement officials those items/areas/plans of unconventional design for which plan review is suggested.

3. Code consultants should teach a course for inspectors to enhance their plan review skills for those plans that are not reviewed by the consultants.

We agree that additional education specifically pointed to plan review would be beneficial to Code enforcement officials. We will review our resources (funds, equipment, manpower) to determine the feasibility of providing such courses.

With regard to the recommendation that the Division Director not serve as presiding officer for disciplinary hearings we the Executive Committee of the Qualification Board find the following:

We agree that the Division Director has worked to avoid any potential conflicts.

We agree that the current structure could provide the opportunity for questions to arise concerning disciplinary procedures.

We also point out that similar opportunities for conflict of interest exist with other Board positions not only with the Qualification Board but within other Boards and Commissions.

General Statute 150B-40(b) makes available remedies for such conflict to parties in a contested case. All administrative agencies and boards are required to follow this and other Statutes under Article 3 and Article 3A. Furthermore we point out that the Qualification Board has voted to designate the Chairman of the Board to preside at hearings unless and until otherwise directed.

In addition the position of Chairman is elected annually.

Therefore, the position of Chairman and presiding officer is subject to change annually.

In conclusion, we cannot agree that legally or otherwise the Division Director should be automatically excluded as presiding officer for any of the Board proceedings.

Recommendation that the Qualification Board establish a continuing education program.

Recommendation that Qualification Board establish the Code Administrator Certification.

We agree with these recommendations and note that since we identified these needs prior to this audit.

Recommendation that the Engineering Division develop quality control programs and provide necessary support for the programs.

We agree with the recommendation in part. First, we assume that these programs would be voluntary not mandatory. Secondly, we sincerely think that the matter of quality control programs should be addressed by the Qualification Board and its staff. Thirdly, implementation of this recommendation does not come without cost - costs which current revenue levels may not be able to absorb. Notwithstanding the above, we agree that the development and promotion of quality control programs is desirable.

Recommendation that we respond to the needs identified by the Jurisdictions.

We agree with this recommendation. We note however that some of the needs identified by your survey responders are being served. Currently, for example, review classes for successful candidates have been conducted for over a year now. Recently policy was changed to increase classroom contact hours from 30 to 40, more than 30% increase. We will begin to alter our examinations to make them more practical and therefore more field inspection oriented.

You have stated that the General Assembly should carefully consider whether Inspection Departments have sufficient statutory authority

to enforce laws and regulations and deal with problem contractors effectively.

We would contend that in fact they do not as was revealed during our many discussions with auditors during this process.

We support this recommendation to the General Assembly and stand willing to provide problematic examples and suggested corrective action.

BAILEY & DIXON  
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OFFICES  
601 St. MARY'S STREET

November 9, 1990

BY MESSENGER

Mr. Edward Renfrow  
State Auditor  
300 North Salisbury Street  
Raleigh, North Carolina 27603

Re: Response to Performance Audit Report

Dear Mr. Renfrow:

As counsel for the North Carolina Licensing Board for General Contractors, we are responding on behalf of the Board to the October 10, 1990 draft of the performance audit conducted by your office.

I. Investigation and Processing of Complaints.

North Carolina General Statute §87-11(a) contains the Board's statutory authority to discipline licensed general contractors. The statute requires that all charges preferred to the Board against a licensed general contractor must be in writing and sworn to by the complainant. Because our courts view the disciplinary process as being penal in nature and require disciplinary statutes to be strictly construed, see Parrish v. North Carolina Real Estate Licensing Board, 41 N.C. App. 102, 254 S.E.2d 268 (1979), the Board follows the language of G.S. §87-11(a) and requires a written sworn complaint before undertaking investigatory and enforcement activity.

All sworn written complaints received by the Board alleging fraud, deceit, negligence, or misconduct are considered by the Board's Review Committee, unless withdrawn by the complainant. The Review Committee does review complaints on unauthorized practice by unlicensed contractors and licensees contracting in excess of their limitations. (As noted in the audit report, during the audit period 52 actions for injunctions were authorized by the Review Committee). In cases when the Review Committee delays decision on a complaint due to pending

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November 9, 1990  
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corrective action by the contractor, the Board's investigator monitors the situation until a final status has been achieved (the contractor either completes remedial work or fails to undertake corrective action). Such cases then come back before the Review Committee for a decision regarding whether or not the case should go to a disciplinary hearing.

Following receipt of a properly submitted complaint, the Board staff may consult with legal counsel, but only regarding what investigatory activities are necessary to produce adequate evidence of the existence or nonexistence of a violation. The Board investigator does obtain information from the local inspections department having jurisdiction over the construction in question. However, in cases in which the local inspections department or certain employees of the department have been accused of failing to detect the existence of deficiencies in the subject construction, the Board investigator always works with and relies upon the Engineering Division of the North Carolina Department of Insurance or independent construction professionals for technical assistance, not the local inspections department. Following investigation, the complaint and the results of the investigation are considered by the Review Committee.

21 N.C.A.C. Chapter 12, Section .0700 establishes the Board's Review Committee. The Board's Review Committee is composed of one Board member, the Secretary-Treasurer, and Board counsel, in accordance with Rule .0701(b). The Board's rules describing the composition and operation of the Review Committee were reviewed and approved in 1989 by the Administrative Rules Review Commission as part of that agency's substantive review of all rules contained in the North Carolina Administrative Code.

The Review Committee makes decisions regarding complaints by consensus of its three members. In cases regarding quality of construction and compliance with the North Carolina Uniform Residential Building Code, great deference is given to the opinion of the Board member. The Board member serving on the Review Committee does not participate in disciplinary hearings resulting from Review Committee cases considered by that Board member. This practice avoids the obvious problems arising from lack of separation of the investigatory and disciplinary functions of the Board and prior ex parte knowledge of disciplinary cases by Board members. See Crump v. Board of Education, 326 N.C. 603, 392 S.E.2d 579 (1990).

Based upon the foregoing clarifications to the information contained in the audit report relating to the processing of complaints and the Review Committee, the Board is of the opinion that a clear statutory guideline does exist as to whether or not

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a case should be presented to the Review Committee, in that all sworn written complaints alleging fraud, deceit, negligence or misconduct are presented. The Board investigator does monitor and attempt to facilitate remedial action on cases pending before the Review Committee. The Board does not favor the recommendation that the Review Committee be composed of two or three Board members because the addition of more Board members, who would be disqualified from hearing disciplinary cases, would impede the Board in its efforts to improve the rate of disposition of disciplinary cases. G.S. §150B-40(b) requires that a majority of the Board (4 members) hear disciplinary cases. Adding more Board members to the Review Committee would further reduce the number of Board members available to hear disciplinary cases and would increase the difficulty of timely disposition.

As noted in the audit report, fourteen disciplinary cases are pending before the Board. This backlog has developed only over approximately the last two years, due to a sharp increase in serious and complex complaints and lengthy hearings. In response to the developing backlog, the Board in late 1989 established a calendar of monthly hearings, and in July 1990 approved the referral of cases to the Office of Administrative Hearings. At present, two of the fourteen pending cases are being referred by the Board to the Office of Administrative Hearings. The Board feels that it was already in compliance with the audit recommendation on this subject prior to issuance of the audit report. The Board is firmly committed to reducing the backlog which has developed and to timely management of complaints and disciplinary hearings.

The audit report contains a tabulation of disciplinary actions taken by the Board following formal administrative hearings. In addition to those actions, the Board has also taken numerous disciplinary actions during the audit period without formal hearings. These actions included:

Revocation	3
Suspension	2
Probation	1
Denial of License	5
Delay in Issuance of License	<u>10</u>
TOTAL	21

The denials of license and delays in issuing license resulted from situations in which an applicant for licensure had committed a violation of the general contracting law prior to applying for a license. In such a case, the Board sends the applicant written

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notification of its proposed decision to deny or delay issuance of the license and informs the applicant of the right to an administrative hearing. If no hearing is requested by the applicant, then the Board's proposal becomes final. The denials of license, obviously, constitute permanent refusals to issue a license. The delays in issuing a license typically range from ninety days to twelve months.

As previously discussed, G.S. §87-11(a) requires that all charges preferred against a contractor be sworn to and in writing. The Board is not of the opinion that unsworn correspondence of the Consumer Protection Division of the Attorney General's Office is a sworn written complaint which prefers charges against a contractor. Present Board policy is to provide written instructions on how to file a complaint to any member of the public contacting the Board office. To facilitate such inquiries by the public, the Consumer Protection Division should inform its complainants that they should contact the Board office to receive instructions if such persons desire to prefer charges.

The Board office will implement a procedure to maintain all correspondence received from the Consumer Protection Division for future reference and possible action, either in the licensee's individual file, or in an indexed miscellaneous file if an unlicensed contractor is involved. The Board office consistently refers information, inquiries, and complaints outside of its jurisdiction to other agencies. The Board office will maintain documentation of such referrals.

## II. Financial Responsibility.

As noted in the audit report, the Board is presently reviewing its rules relating to financial responsibility to assure that independent and objective financial information is supplied at appropriate times during the licensing and renewal process. Consequently, the Board already is in compliance with the recommendation of the audit report. Under present Board rules, all licensees are required at the time of annual renewal to provide data establishing the required level of financial responsibility for the license limitation. The Board may require an audited financial statement as a condition of renewal should circumstances warrant.

The Board agrees with the audit report's overall conclusion that the Board is in compliance with the statutes governing the regulation of the practice of general contracting. While the Board firmly believes that it must strictly comply with the jurisdictional parameters stated in the statutes, it agrees

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with some of the other findings in the audit report and has already implemented measures to improve the receipt, processing, and disposition of complaints, and the referral of information between the Board and other agencies.

### III. Structure and Management of the Home Construction Regulatory System.

The audit report recommends creation of a recovery fund to provide monetary compensation to consumers who are unable to obtain relief through the court system. While the Board does not agree that the necessity of establishing such a fund has been clearly demonstrated, the Board agrees that the availability of any such fund should be limited to meritorious claims after the claimant has exhausted all other available remedies. One significant problem with the recovery fund proposed in the audit report is that the fund would not cover work by unlicensed contractors, especially items such as additions and remodeling that are below the statutory dollar amount requiring licensure, which are a major source of consumer complaints.

A more equitable and inclusive approach would be to charge an extra \$10.00 on each building permit issued in North Carolina, which monies would be remitted periodically by the local inspections department to the agency administering the recovery fund. Such an approach would spread the responsibility for funding among all groups, licensed and unlicensed, and large and small projects. The administration of the fund should be assigned to an independent agency, such as the Department of Insurance, and not to an occupational licensing board which would also be undertaking disciplinary or injunctive action against the person responsible for the construction.

The basic issue, however, appears to be that a problem is perceived to exist with the operation of the civil judicial system in handling cases between a homeowner and builder. The most direct and logical approach would be to attempt improvements within the existing court system to remedy any injustices which might occur, and not to create an additional bureaucracy grafted onto an administrative agency. The function of an occupational licensing board is to ensure, through licensing, that only qualified persons engage in the occupation, and, through disciplinary action, take action against the holder's license when misconduct occurs. Such a board is ill-suited and ill-equipped to become a civil court for the purpose of providing monetary compensation to claimants.

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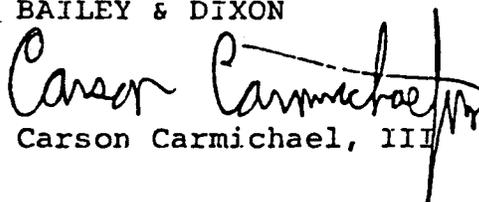
The Board strongly opposes consolidation of the occupational licensing boards related to home construction. The resulting creation of a superboard with monopoly regulatory power over all phases of construction is both unwarranted and unwise. The long-standing policy of the General Assembly in establishing the regulation of professions and occupations has been that each occupation and profession should be regulated independently. This separation of power among the occupational licensing boards eliminates conflicts of interest which may result when occupations with potentially adverse economic interests are placed in regulatory charge of each other. Such a situation would occur if a superboard including both general contractors and subcontractors regulated and disciplined the activities of both groups. A similar situation would also occur if all health care professions, i.e., physicians, chiropractors, podiatrists, nurses, optometrists, opticians, etc. were combined into a superboard.

The only specific item in the audit report on the Board related to coordination with other construction-related licensing boards deals with documenting and maintaining records on referrals to and from the Board. As previously discussed, the Board is implementing changes to comply with the audit report's recommendations. The Board questions whether creation of a larger bureaucracy would improve efficiency and effectiveness of regulation, given the competing interests that would be part of such a nonhomogeneous board.

The Board appreciates the opportunity to present this response to the audit report and trusts that the information contained herein will assist the Legislative Study Committee on Consumer Issues in completing its endeavors.

Sincerely,

BAILEY & DIXON

  
Carson Carmichael, III

CC,III:mps

cc: Mr. H. M. McCown, Secretary-Treasurer

EXECUTIVE OFFICES  
1200 Front Street, Suite 105



ROBERT L. BROOKS, JR.  
Executive Director

## STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

P. O. Box 18727  
Raleigh, N. C. 27619  
919/733-9042

October 31, 1990

The Honorable Edward Renfrow  
Office of the State Auditor  
300 North Salisbury Street  
Raleigh, North Carolina 27603-5903

Dear Mr. Renfrow:

The State Board of Examiners of Electrical Contractors has carefully reviewed your PERFORMANCE AUDIT REPORT: REGULATION OF THE HOME CONSTRUCTION INDUSTRY, dated October, 1990. In response to your request, as contained in your letter of October 10, 1990, we are pleased to submit the following comments. Our comments are directed to the various recommendations contained in the Audit Report, as will appear below.

The recommendations to modify the \$45,000 threshold for requiring a General Contractors License and to establish residence requirements pertaining to a person who builds on his own land.

These recommendations pertain to the Licensing Board for General Contractors and we have no response to these recommendations.

The recommendation to allow the imposition of fines for ordinary negligence and untimely completion of contracts.

Our Board is aware of the constitutional problems inherent in such a proposal: In the Matter of Appeal from Civil Penalty, 324 N.C. 373 (1989). We believe that our Board's power to revoke licenses is a sufficient deterrent for the protection of the public.

The recommendation to establish uniform regulations to preclude issuance of building permits to a contractor with outstanding code violations.

Our Board concurs with this recommendation and believes that such regulations or procedures should be incorporated in the administrative volume of the North Carolina Building Code.

The recommendation to require performance bonds.

Our Board does not concur with this recommendation. We believe that such a requirement would place an unjustifiable hardship on our licensees and would provide no additional protection of life,

Mr. Renfrow

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October 31, 1990

health and property of the public. Everyone knowledgeable of the construction and insurance industries recognizes the extreme difficulty in obtaining performance bonds. This is especially true with respect to small, newly established contractors, and the burden would fall particularly hard on them.

The recommendation to establish a recovery fund.

Our Board does not concur with this recommendation that would compel all licensees to pay for the mistakes of a very few. Furthermore, in a single agency concept, contractors in one trade would be paying for the mistakes of a contractor in another trade. Under our present system, we have no record of a case where a consumer has suffered financial losses at the hands of a licensee. This recommendation would be an expensive undertaking with little or no benefit to the public. Our observations, in a few other states where such statutes have been enacted, have revealed that it is the building materials suppliers and subcontractors, not the homeowners, who actually benefit from such a fund.

The recommendation to review all statutes regulating the Home Construction Industry.

The General Assembly, during its 1989 session, reviewed G.S. Chapter 87, Article 4 (the electrical contracting licensing statutes), and enacted revisions which included a continuing education requirement beginning July 1, 1991. Accordingly, we feel that the General Assembly has updated our statutes to provide the necessary authority to protect the health, safety and welfare of the public and that no other revisions to G.S. Chapter 87, Article 4, are needed at this time.

The recommendation that the General Assembly develop a plan for creating a single construction regulatory agency.

We strongly oppose this recommendation.

Historically, the birth and growth of administrative agencies in this country came in response to a necessity: a need for expertise. Agencies specialize in narrow areas of activity for reasons of efficiency and technical proficiency. Thus, in North Carolina and elsewhere, we have physicians regulating physicians, accountants regulating accountants, funeral directors regulating funeral directors, electrical contractors regulating electrical contractors, etc. Of course, public members should -- and do -- also sit on the boards, but it takes a person with knowledge of electrical installations, for example, to recognize improper electrical work, so the public may be protected.

Mr. Renfrow

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October 31, 1990

A single construction agency would either have to be a very large body, comprised of a confederation of occupational specialties, or else a body comprised of persons with no specialized knowledge or experience. The first approach would result in no substantial change in the present system, and the second approach would result in a serious loss of expertise.

Perhaps an equally fundamental objection to the single-agency proposal is that such a system would merely create more bureaucracy. The same number of applicants and licensees would have to be served, and departments within the "super-agency" would have to be established to serve the diverse occupational specialties. And departmental staff would have to be supervised by a new top layer of management.

The General Assembly, many years ago, had the wisdom to recognize the practicality and necessity of establishing licensing boards separated by occupational specialties. This sound system has worked well and should be preserved.

CONCLUSION

We are gratified to see that your audit of our Board concluded that:

"We believe the State Board of Examiners of Electrical Contractors is managing its regulatory responsibilities in an effective manner."

We strive for excellence in fulfilling our statutory duty "to protect the life, health and property of the public." G.S. 87-42. Consistent with that goal and duty, we have carefully responded to your AUDIT REPORT. We hope our comments are helpful, and we welcome the opportunity to be of further service, as you may request.

Sincerely,

STATE BOARD OF EXAMINERS  
OF ELECTRICAL CONTRACTORS

  
William T. Easter, Chairman

WTE:hms

cc:Board Members

Mr. William R. Hoke  
Attorney at Law  
1213 Blenheim Drive  
Raleigh, NC 27612



**MEMBERS**

B. C. MILLER, RURAL HALL, N.C.  
M. GOFORTH, HENDERSONVILLE, N.C.  
W. E. GARRETT, JR., GREENSBORO, N.C.  
R. H. KIM, CHARLOTTE, N.C.  
S. M. SHINN, GREENVILLE, N.C.  
J. A. WARD, JR., RALEIGH, N.C.  
RONNIE J. HAHN, CLAYTON, N.C.



**Exhibit E  
OFFICERS**

B. C. MILLER, *Chairman*  
W. E. GARRETT, JR., *Vice-Chairman*  
M. GOFORTH, *Secretary-Treasurer*

**EXECUTIVE OFFICE**

F. O. BATES, *Executive Secretary*  
806-7 RALEIGH BLD'G  
RALEIGH, N.C. 27602  
P.O. BOX 110  
TELEPHONE 919/733-9350

**State Board of Examiners of Plumbing, Heating  
& Fire Sprinkler Contractors  
Raleigh, N. C.**

October 31, 1990

Mr. Edward Renfrow  
State Auditor  
Office of the State Auditor  
300 N. Salisbury Street  
Raleigh, NC 27603-5903

Re: Performance Audit: State Board of Examiners of  
Plumbing, Heating and Fire Sprinkler Contractors

Dear Mr. Renfrow:

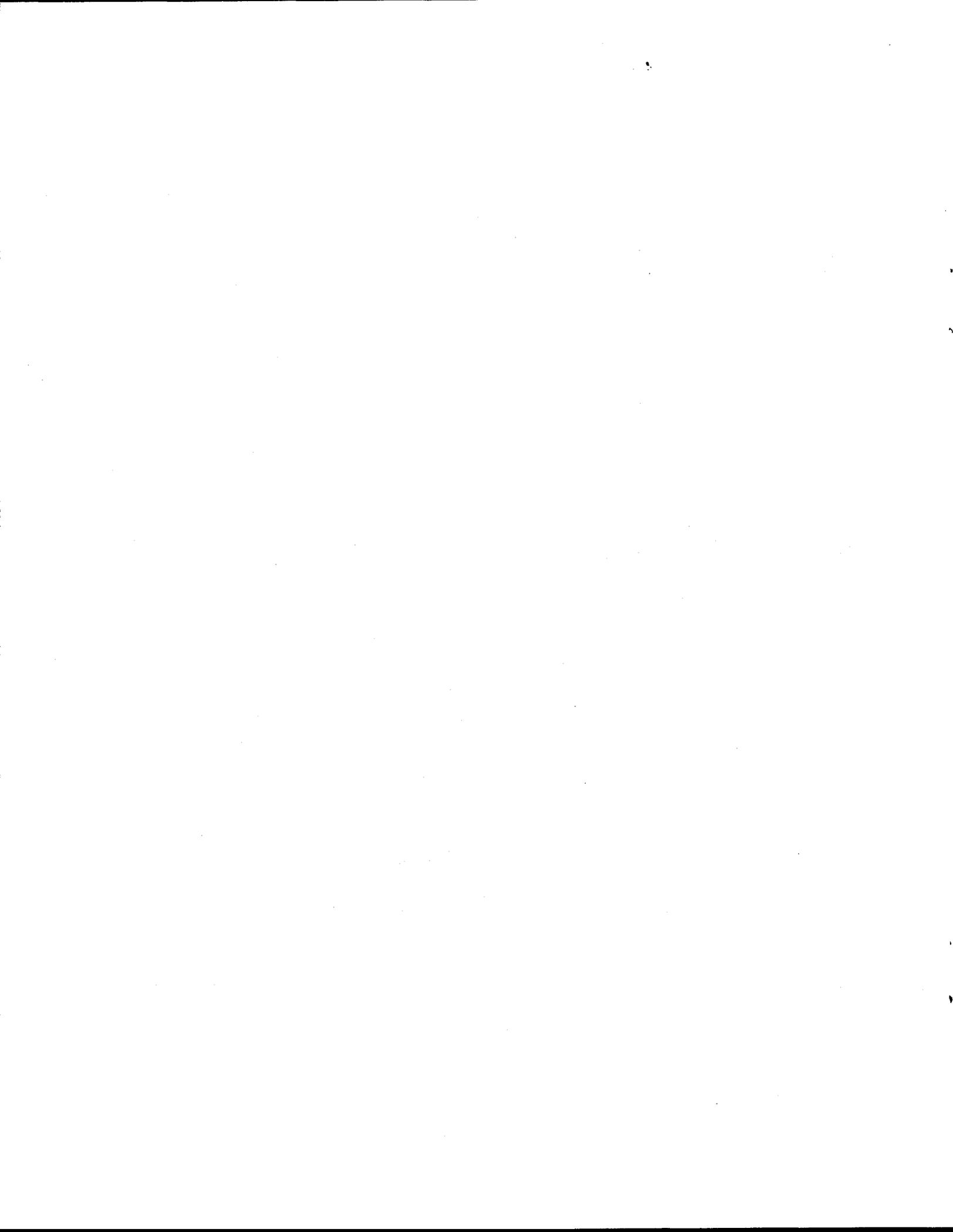
The following is submitted:

1. The Board meets every month, and whenever required, not necessarily every four weeks.
2. Under General Statutes 87-25, the fine, upon conviction is not less than \$100.00 or imprisonment for not more than three months, or both, in the discretion of the court.
3. The Board is developing and will institute revisions in record keeping and tracking of complaints so that our system can be updated at least monthly.

Very truly yours,

F. O. Bates  
Executive Secretary

FOB:am



APPENDIX E



**SPONSORS  
CONSUMER PROTECTION STUDY COMMITTEE  
PROPOSED LEGISLATION**

<u>APP.</u>	<u>TITLE OF LEGISLATION</u>	<u>SPONSOR</u>
C-1:	An Act to Increase Penalties for Violations of the Debt Collection Practices Acts.	Rep. Hasty
C-2:	An Act to Abolish Use of the Rule of 78s as it Pertains to Installment Loans Secured by Mobile Homes.	Sen. Speed
C-3:	An Act to Regulate Reverse Mortgages.	Rep. Brubaker
C-4:	An Act to Amend Chapter 66 Regulating Prepaid Entertainment Contracts to Include Sales of Campground Memberships.	Sen. Speed
C-5:	An Act to Equalize the Damage Disclosure Requirements for Auto Manufacturers and New Car Dealers.	Sen. Speed
C-6:	An Act to Regulate the Business of Providing Credit Repair Services.	Rep. Lineberry
C-7:	An Act to Amend the General Statutes Relating to Duties of Local Building Inspectors.	Sen. Speed
C-8:	An Act to Require Awarding Reasonable Attorneys Fees to Prevailing Plaintiffs in Claims Involving Home Construction.	Rep. Hasty
C-9:	An Act to Require the General Contractors Licensing board and the Code Officials Qualification Board to Implement Recommendations of State Auditor.	Rep. Hasty
C-10:	An Act to Decrease Project Cost Minimum for Applicability of Contractors Licensure Requirements and to Clarify Exemptions.	Rep. Easterling
C-11:	An Act to Clarify the Disciplinary Authority of General Contractors Licensing Board, and to Provide that a Person who Prefers Charges against Licensee is an Aggrieved Party Under Chapter 150B.	Sen. Speed
C-12:	An Act to Establish the Homeowner's Recovery Fund.	Rep. Hasty
C-13:	An Act to Establish the Residential Contractors Review Committee.	Rep. Hasty

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